Disciplinary Orders and Regulatory Decisions

DATE PUBLISHED: 2 DECEMBER 2020

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. **Mr Neil Gordon Kirby FCA** of
King's Lynn, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 8 September 2020

Type of Member Member

Terms of complaint

Complaints

1a. Between 27 November 2009 and 21 December 2009, Mr Neil Gordon Kirby FCA having been requested to prepare the draft paperwork to enact a special resolution to amend the voting rights of the shares in 'A' PLC to be voted on at an Extraordinary General Meeting on 21 December 2009, on discovering that the draft resolution circulated on 30 November 2009 was incorrect, arranged for a revised draft resolution to be drafted and issued this to Mr 'B' and Ms 'C' on 10 December 2009 but deliberately did not:

a) send the revised special resolution to all shareholders and/or advise Mr 'B' and Ms 'C' that the revised special resolution should be sent to all shareholders; and/or

b) advise Mr 'B' and Ms 'C' that proper notice of 21 days for the Extraordinary General Meeting to pass the special resolution could no longer be met.

AND/OR

1b. Between 27 November 2009 and 21 December 2009, Mr Neil Gordon Kirby FCA having been requested to prepare the draft paperwork to enact a special resolution to amend the voting rights of the shares in 'A' PLC to be voted on at an Extraordinary General Meeting on 21 December 2009, on discovering that the draft resolution circulated on 30 November 2009 was incorrect, arranged for a revised draft resolution to be drafted and issued this to Mr 'B' and Ms 'C' on 10 December 2009 but was reckless in that he did not:

a) send the revised special resolution to all shareholders and/or advise Mr 'B' and Ms 'C' that the revised special resolution should be sent to all shareholders; and/or

b) advise Mr 'B' and Ms 'C' that proper notice of 21 days for the Extraordinary General Meeting to pass the special resolution could no longer be met.

AND/OR

1c. Between 27 November 2009 and 21 December 2009, Mr Neil Gordon Kirby FCA having been requested to prepare the draft paperwork to enact a special resolution to amend the voting rights of the shares in 'A' PLC to be voted on at an Extraordinary General Meeting on 21 December 2009, on discovering that the draft resolution circulated on 30 November 2009 was incorrect, arranged for a revised draft resolution to be drafted and issued this to Mr 'B' and Ms 'C' on 10 December 2009 but failed to:

a) send the revised special resolution to all shareholders and/or advise Mr ‘B’ and Ms ‘C’ that the revised special resolution should be sent to all shareholders; and/or

b) advise Mr ‘B’ and Ms ‘C’ that proper notice of 21 days for the Extraordinary General Meeting to pass the special resolution could no longer be met.

2. Mr Neil Gordon Kirby FCA accepted and/or continued the appointment as auditor and signed the audit reports for ‘A’ PLC for the year ends listed below when he was a trustee in the ‘D’ (which held options (dated 21 October 2009) to buy the majority of the shares in ‘A’ PLC) and this indirect financial interest caused a threat to his independence that was so high no safeguard could have been adopted to reduce the threat to an acceptable level, in breach of paragraph 7 of APB Ethical Standard 2:

a) Year ended 31 March 2010, signed on 25 August 2010; and/or
b) Year ended 31 March 2011, signed on 28 July 2011.

Mr Neil Gordon Kirby ACA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a for complaints 1a, 1b and 2, and Disciplinary Bye-law 4.1b for complaint 1c.

Hearing date	08 September 2020
Case Management hearings	3 March and 5 August 2020
Pre-hearing review or final hearing	Final Hearing
Complaint found proved	1(c) and 2, by admission
Remaining heads of complaint	Dismissed by agreement
Sentencing order	No sanction in respect of Complaint 1(c) Reprimand in respect of Complaint 2
Order for Costs	£500 towards the Institute’s costs to be paid at the rate of £40 per month for 11 months and £60 for the final month.
Parties present	Mr Neil Gordon Kirby, by videolink. He was not legally represented Ms Victoria Morgan, Counsel to the Investigation Committee (IC), by videolink
Hearing in public or private	The hearing was in public
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service
Documents considered by the tribunal	The tribunal considered the documents contained in the IC’s bundle

Findings on preliminary matters

At the Case Management Hearing on 3 March 2020, The Respondent admitted Complaints 1(c) and 2, and the IC representative confirmed that the case should proceed upon those two heads of complaint alone. Accordingly, Complaints 1(a) and (b) were dismissed.

The hearing on 8 September 2020 therefore took the form of a Sanctions hearing.

The Investigation Committee's case

1. BACKGROUND

1.1 Mr Neil Kirby ((the Respondent) was a Director of 'E' Ltd, an accountancy practice. The Respondent had worked for 'F' since 1983, preparing his personal and business accounts.

1.2. Mr 'G' and the Respondent were RIs, responsible for signing audit reports on behalf of the firm. The Respondent resigned as a director on 28 September 2017 and the company was sold. The firm surrendered its audit registration on 12 June 2018.

1.3. 'A' PLC and other related companies (including 'H' PLC) were long standing clients of the firm. The Respondent was the engagement partner and RI for the 'I' companies, except for 'A' PLC for the years ended 31 March 2008 and 2009 when Mr 'G' was the RI. The Respondent acted as a personal advisor to Mr 'F' from 1983 to his death in 2007. 'E' Ltd acted as auditors for 'A' PLC from incorporation up to and including the year ended 31 March 2013.

1.4. In 1993, Mr 'F' set up the 'D' to benefit the employees of 'H' PLC by providing events such as staff barbecues or long service awards for retiring employees.

1.5. The Respondent was appointed as a trustee of 'D' in 1993, along with Mr 'J', a local solicitor who also acted for Mr 'F'. 'E' Ltd prepared the trust tax returns for 'D'.

1.6. Mr 'F' was the controlling shareholder in 'A' PLC until his death on 17 February 2007. Following his death 'A' PLC was run by one of Mr 'F's daughters, Ms 'C' and Mr 'B. Mr 'F' had three other daughters, none of which participated in the running of the business.

1.7. The Respondent was appointed as an executor of Mr 'F's Estate upon his death, along with Mr 'J' and Ms 'C', one of Mr 'F's four daughters. The Respondent and Mr 'J' continued to act as trustees of the 'D'.

1. 8 From Mr 'F's death until 22 December 2009, Mr 'F''s controlling shareholding in 'A' PLC was held in his estate. Following this, the shares were distributed to Mr 'F's four daughters.

1.9 There was an option over these shares in 'A' PLC, dated 21 October 2009, which was exercisable by the trustees of 'D', namely the Respondent and Mr 'J'. These options were subsequently exercised in February 2012 by the trustees and the shares sold to two existing directors of 'A' PLC, being Mr 'B' and Ms 'C'. Prior to the options being exercised, Mr 'G' carried out a valuation of the shares. During this time, 'A' PLC remained an audit client of the firm. 'E' Ltd resigned as auditors of 'A' PLC in January 2014.

1.10 Three of the sisters (not Ms 'C') took civil action against 'A' PLC, the Respondent and a representative of Mr 'J' (who had died). On 20 April 2015 a judgment was handed down by HHJ Pelling QC. Judge Pelling found that the Respondent had conspired, in December 2009, to injure by unlawful means in respect of an improper Special Resolution of 'A' PLC to remove the voting rights of the class of shares held by three of Mr 'F's daughters ('the special resolution conspiracy').

1.11 In his judgment, Judge Pelling QC also commented on the following:

- 'E' Ltd were appointed to carry out a share valuation under option agreements (which allowed the shares to be purchased by the 'D') and in his view this was a conflict given the Respondent's position as a trustee of 'D'.
- In his view, no reasonable valuer would have valued the shares of 'A' PLC on the basis that had been adopted by Mr 'G'.

1.12 A costs' consent order concluding the litigation was agreed between the parties with total costs payable by the Respondent and the estate of Mr 'J' (deceased) of £627,500 being agreed.

Events between 17 February 2007 and 28 October 2009

1.1 In 2009, the daughters wanted the executors to release the shares to allow them access to dividends from the company. It was therefore agreed that the shares could only be distributed if additional options were granted against these shares.

1.2 The intention was that if the case failed, the options would be exercised to bring the shares back to the estate to ensure there were sufficient funds to pay the costs associated with the case. This would relieve the executors of any personal liability if there was a shortfall of funds.

1.3 These options, dated 21 October 2009, (the '2009 Options') were drafted by Mr 'J' and were reviewed by the Respondent and were in addition to the 2004 Options.

1.4 The terms of the 2009 Options were broadly the same as the 2004 Options in that they were exercisable by 'D' and not the estate of Mr 'F'. The main difference was that the value of the shares was to be reduced by the costs of the 'K' case (see below) and any tax liabilities payable by Mr 'F's estate.

1.5 The 2009 Options were signed in October 2009 and the shares duly transferred to Mr 'F's daughters in December 2009. Following this date the shares were held as follows:

Shareholder	**Relationship**	**No of shares**	**% holding** (nearest 0.1%)
Mr 'B'	CEO of 'A' PLC	12,500	25.0
Ms 'C'	Daughter of Mr 'F' and director of 'A' PLC	9,204	18.41
Miss 'L'	Daughter of Mr 'F'	9,204	18.41
Miss 'M'	Daughter of Mr 'F'	9,204	18.41
Miss 'N'	Daughter of Mr 'F'	9,204	18.41
Mr 'O'	Senior employee	304	0.6
Mr 'P'	Senior employee	304	0.6
Mr 'Q'	Senior employee	76	0.2

1.6 Therefore, Miss ‘L’, Miss ‘M’ and Miss ‘N’ had 55.23% of the voting rights in the business. The three daughters collectively could exercise control over the company.

Events between 28 October 2009 and 10 December 2009

1.7 Also, in October 2009, Mr ‘B’ contacted the Respondent regarding a change in the Articles of Association of the company. The proposed change was to split the shares into three classes, ‘A’, ‘B’ and ‘C’. The Respondent was asked to prepare the required legal notices and the Special Resolution to be voted on at an Extraordinary General Meeting (‘EGM’) of the company on 21 December 2009. The intention of the division of the shares into different classes was so that the shareholders working in the business (Mr ‘B’ and Ms ‘C’) would retain voting rights and those shareholders not working in the business (the three other daughters) would not have voting rights but would still have rights to dividends.

1.8 The Respondent’s understanding was that the EGM had been deliberately arranged for 21 December 2009 so that it was easier for one of the daughters, Miss ‘N’, to attend.

1.9 The Respondent was instructed to prepare the appropriate resolutions approving the changes to the shares and outsourced the drafting, to a third party provider, ‘R’, as would be the firm’s usual practice. The Respondent verbally instructed ‘R’ to prepare the required paperwork to pass a special resolution which would divide the shares into the three classes and for the C shares to have no voting rights as per instructions received from Mr ‘B’.

1.10 ‘R’ provided the draft special resolution documentation to the Respondent on or around 27 November 2009. The Respondent then served the notice of the Extraordinary General Meeting (EGM), and draft resolution on all the shareholders on 30 November 2009, and 1 December 2009 by emails sent on his behalf to Miss ‘L’, Miss ‘N’, Ms ‘C’, Mr ‘B’, Mr ‘O’, Mr ‘P’ and Mr ‘Q’ in line with the Articles of the company which require all shareholders to have 21 days’ notice of an EGM. An attempt was made to serve the notice on Miss ‘M’ on 30 November 2009 which failed. Ms ‘C’ was contacted to obtain a new email address on 1 December 2009 which was subsequently sent on 3 December 2009 by Ms ‘C’, with the Respondent’s employee copied on the email.

1.11 The original documentation prepared by ‘R’ and circulated by the Respondent was wrongly drafted in that all of the shareholders were to be given shares in either the A or C category and there was no change in voting rights between the classes of share. No shares were to be reclassified as B shares. This was not identified by the Respondent when he circulated the documents and notice on 30 November 2009.

1.12 In early December 2009, the Respondent became aware that the resolution as drafted by ‘R’ did not show the change of the voting rights of the C shares (which would be the shares held by the three daughters not working in the business) from voting to non-voting. The Respondent asserts that he noticed this error when internally filing the relevant paperwork on or before 4 December 2009. This resulted in an email dated 4 December 2009 sent by the Respondent to Mr ‘S’, an employee of ‘R’, requesting that the documentation be amended.

1.13 The Respondent received the revised draft special resolution from ‘R’ on 8 December 2009. The Respondent forwarded the revised draft special resolution to Mr ‘B’ and Ms ‘C’ only, on 10 December 2009. Aside from the amendment for the voting rights, it is potentially significant to note that the original resolution refers to the meeting as being an ‘Extraordinary Meeting’ and included the intended date of the meeting, whereas the revised resolution refers only to it being a ‘General Meeting’ and the date has been left blank.

1.14 This email from the Respondent stated ‘please ring me to discuss’. The Respondent states that he did not receive a call from Mr ‘B’ or Ms ‘C’.

1.15 The EGM went ahead as planned on 21 December 2009 at the offices of 'E' Ltd, despite the revised draft special resolution being issued on 10 December 2009, only 11 days before the EGM and only being sent to some and not all shareholders by the Respondent.

1.16 The Respondent was in attendance at the EGM as an observer in his capacity as the auditor/accountant of 'A' PLC.

1.17 Mr 'F's three other daughters ('the daughters'), who were not directly involved in 'A' PLC, and who became C non-voting shareholders, did not attend the EGM and therefore did not vote on the revised resolution.

1.18 The Special Resolution was passed at the EGM and the updated shareholding in 'A' PLC, following the EGM was as follows:

Shareholder	**Class of share**	**No of shares**	**% voting rights after EGM** (nearest 0.1%)	**% voting rights before EGM** (nearest 0.1%)
Mr 'B'	A Ordinary (voting)	12,500	57.6	25.0
Ms 'C'	A Ordinary (voting)	9,204	42.4	18.4
Miss 'L'	C Ordinary (non-voting)	9,204		18.4
Miss 'M'	C Ordinary (non-voting)	9,204		18.4
Miss 'N'	C Ordinary (non-voting)	9,204		18.4
Mr 'O'	C Ordinary (non-voting)	304		0.3
Mr 'P'	C Ordinary (non-voting)	304		0.3
Mr 'Q'	C Ordinary (non-voting)	76		0.2

Events between 22 December 2009 and 19 March 2012

1.19 In September 2010 the three daughters realised that higher dividends were being paid to Ms 'C' and Mr 'B' than they were receiving. This led to a meeting between the three daughters and Mr 'B' on 21 October 2010. At that meeting Mr 'B' made an offer to purchase the shares and agreed he would obtain a valuation. On 8 March 2011 Mr 'B' made an offer of £6.67 per share based on a valuation of the company he had obtained.

1.20 Around 17 March 2011 Mr 'J' became involved in concerns as to whether the resolution passed on 21 December 2009 was valid.

1.21 A meeting took place on 1 April 2011 which was attended by the three daughters, Mr 'B', Ms 'C', Mr 'J' and the Respondent. Mr 'B' still wished to purchase the shares of the three daughters and arranged a share valuation to be carried out by 'T' who had valued the shares at £12.44 per share. Mr 'B' offered to pay £12.44 per share plus a premium of 10% to the three daughters and they rejected the offer.

1.22 Mr 'B' withdrew his offer and then notified the three daughters that he would ask the trustees of 'D' to exercise the share options to purchase the shares. Under the terms of the 2004 and 2009 options agreements, the value to be paid by 'D' was 'fair value' to be determined by 'E' Ltd as auditors of the company.

1.23 On 10 February 2012 Mr 'B' wrote to the trustees of 'D' and withdrew his request for the trustees to exercise the options. Further discussions took place between the parties involved.

1.24 On 20 February 2012 the trustees of 'D' wrote to the three daughters and explained that the estate had lost a claim against 'K', solicitors who had acted as tax advisers to the late 'Mr 'F' in connection with a management buy-out of 'H' PLC. They explained that if an appeal against the 'K' judgment was not successful a significant amount of money would need to be raised to pay the costs. As the trustees were also executors of Mr 'F's estate they would be personally liable and they were unwilling to carry such a cost. They stated that there was a narrow window in order to persuade Mr 'B' to reinstate the offer for the shares which he had withdrawn.

1.25 On 22 February 2012 the trustees of 'D' met and resolved to exercise the options and appoint 'E' Ltd to carry out the share valuation. Mr 'B' objected to this action in relation to Ms 'C's shares.

1.26 On 22 February 2012 the shares were transferred to the trustees as documented on the company's annual return and the trustees wrote to Mr 'B' accepting his offer to buy the shares from 'D' despite the fact that no share valuation had been carried out at this point and any sums received by 'D' for the shares could not be transferred to the estate of Mr 'F' to pay any costs for the 'K' case without committing a breach of trust.

1.27 The 'K' appeal was lost in March 2012 and the court costs were deemed to be £500,000.

1.28 Mr 'G' carried out the share valuation relating to the exercising of the options on behalf of 'E' Ltd and this was issued on 11 April 2012. The shares were valued at £10.41 per share, giving a total value of the shares of 9,204 of each daughter as being £95,813.64. Mr 'G' stated in his valuation that the value was prior to any deduction of the costs of the 'K' case of £500,000.

1.29 The valuation was rejected by the three daughters and the court action ensued.

1.30 The valuation performed by Mr 'G' was done on a net assets basis rather than a maintainable earnings basis.

2 Relevant Rules; Guidance; Regulations and / or Legislation

Companies Act legislation for special resolutions

2.1 The Articles of Association of 'A' PLC as filed at Companies House, dated 19 November 2001, adopted the model 'Table A' articles of association which set out the rules for operating the company. The model articles refer to the provisions of the Companies Act 1985 which were in force at the time the Articles were adopted by 'A' PLC. These Articles were not subsequently updated following the enactment of the Companies Act 2006 and

therefore the provisions of Table A in accordance with the Companies Act 1985 are applicable.

2.2 The Companies Act 2006 set out the requirements for amending the Articles of Association of a company.

2.3 Section 21 states:

Amendment of articles

A company may amend its articles by special resolution.

2.4 Table A sets out the requirements of a special resolution and the voting at general meetings:

General Meetings

36. All general meetings other than annual general meetings shall be called extraordinary general meetings.

Notice of General Meetings

'38. An annual general meeting and an extraordinary general meeting called for the passing of a special resolution or a resolution appointing a person as a director shall be called by at least twenty-one clear days' notice. All other extraordinary meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed –

a) in the case of an annual general meeting, by all the members entitled to attend and vote thereat; and

b) in the case of any other meeting by a majority in number of the members having a right to attend and vote being a majority together holding not less that ninety-five per cent in nominal value of the share giving that right.'

Proceedings at General Meetings

'40. No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.'

2.5 For 'A' PLC to alter its Articles of Association such that the voting rights could be amended, a special resolution needed to be passed. A special resolution can only be voted on at an Extraordinary General Meeting ('EGM'). The EGM requires 21 clear days' notice to be given to shareholders. The vote can only take place if at least two members of the company are present. The EGM may have a shorter notice period if a majority of the holders of at least 95% of the voting rights approve a shorter notice period.

Ethical standards

2.6 Paragraph 7 of APB Ethical Standard 2 (revised) states:

'Save where circumstances contemplated in paragraphs 9, 10, 12, 19 or 21 apply, the audit firm, any partner in the audit firm, a person in a position to influence the conduct and outcome of the audit or an immediate family member of such a person shall not hold:

a) any direct financial interest in an audited entity or an affiliate of an audited entity; or

b) any indirect financial interest in an audited entity or an affiliate or an audited entity, where the investment is material to the audit firm or the individual, or to the intermediary; or

c) any indirect financial interest in an audited entity or an affiliate of an audited entity, where the person holding it has both;

i) the ability to influence the investment decisions of the intermediary; and

ii) actual knowledge of the existence of the underlying investment in the audited entity.'

2.7 Paragraph 19 states:

'Where a direct or an indirect financial interest in the audited entity or its affiliates is held in a trustee capacity by a person in a position to influence the conduct and outcome of the audit, or an immediate family member of such a person, a self-interest threat may be created because either the existence of the trustee interest may influence the conduct of the audit or the trust may influence the actions of the audited entity.

Accordingly, such a trustee interest is only held when:

- *the relevant person is not an identified potential beneficiary of the trust; and*
- *the financial interest held by the trust in the audited entity is not material to the trust; and*
- *the trust is not able to exercise significant influence over the audited entity or an affiliate of the audited entity; and*
- *the relevant person does not have significant influence over the investment decisions made by the trust, in so far as they relate to the financial interest in the audited entity*.'

3 Complaint 1 – special resolution documentation

3.1 Following Mr 'F's death in February 2007, the shares that he held in 'A' PLC went into his estate. The beneficiaries of the shares were Mr 'F's four daughters. The executors of the estate (the Respondent, Mr 'J' and Ms 'C') initially held the shares in the estate to ensure they had sufficient funds to pursue a legal case against 'K' and to pay any tax liabilities. However, this meant that the daughters were not receiving dividends from the shares and therefore it was agreed in 2009 that the shares would be transferred to the daughters with an additional option agreement put in place to ensure that the costs of the 'K' case and the tax liabilities would reduce the value of the shares once agreed.

3.2 Only one of the four daughters, Ms 'C', was actively involved in the day to day running of 'A' PLC. The other active director was a non-family member, Mr 'B'. Following the shares being transferred from the estate to the four daughters, the three daughters, who had no involvement in the day to day running of the business, collectively obtained control of the company as they held more than 50% of the voting rights.

3.3 The Respondent was requested by Mr 'B' to prepare a special resolution on behalf of 'A' PLC whereby the three daughters who did not participate in the running of the company would be allocated non-voting shares and that he and Ms 'C' would then hold the voting shares.

3.4 The Respondent engaged ‘R’ to prepare the documentation and on 30 November 2009 a proposed special resolution was served on all shareholders by ‘U’, an employee of ‘E’ Ltd, on from Mr ‘B’ was to re-issue three types of shares, A, B and C. The A and B shares would have voting rights and the C shares (proposed to be allocated to the three daughters) would have no voting rights. The documentation was not drafted correctly and the resolution stated that the C shares would have voting rights on behalf of The Respondent. The resolution was to be considered at an Extraordinary General Meeting (EGM) of ‘A’ PLC on 21 December 2009. The instructions to the Respondent

3.5 Under the Articles of Association of the company, ‘A’ PLC must give shareholders 21 days’ notice of a convening of a general meeting. By sending the proposed special resolution to all shareholders on 30 November 2009, this notice period was satisfied.

3.6 On or around 4 December 2009, it was identified that the circulated resolution was incorrect.

3.7 The Respondent states in his witness statement that he identified this error when dealing with the filing of the relevant documentation internally. The judge did not accept this as he determined that the error had been identified by Mr ‘B’. The Respondent emailed ‘R’ on 4 December 2009 and made the following observation regarding the original resolution:

> *‘It therefore does not specify about the 'C’ shares in terms of voting rights not dividends. This may well be to our advantage as I have had a phone call from the managing director who is adamant that the 'C’ shares should have no voting rights. Will this cause a problem that the notice does not state the details of the 'C’ shares.’*

3.8 The Respondent received the amended notices and special resolution from ‘R’ on 8 December 2009. He confirmed that he checked this carefully to ensure that the notices correctly reflected that the C shares would not have voting rights.

3.9 These documents were then forwarded by the Respondent to Mr ‘B’ and Ms ‘C’ on 10 December 2009, 11 days before the EGM, less than the 21 days required under the company’s Articles. In this email, The Respondent states:

> *‘Attached amended resolution and another form that will now also need signing when meeting held and resolution passed.*
>
> *Please ring to discuss …’*

3.10 The ‘other form’ referred to in this email was a form SH10 which is a notice of particulars of variation of rights attached to shares which is required to be filed with the Registrar of Companies.

3.11 The Respondent did not forward the amended special resolution to any of other shareholders, being the other daughters and the three employees, as he had with the original documentation.

3.12 The Respondent did not advise Mr ‘B’ and Ms ‘C’ that he had not done so and did not inform them that they should ensure that the revised documentation is forwarded to all shareholders.

3.13 The Respondent also did not advise the directors that the notice period required for an EGM was 21 days and that insufficient notice was therefore being given in relation to the revised special resolution.

3.14 In his witness statement, the Respondent states that he did not receive a call from Mr ‘B’ or Ms ‘C’, nor did he receive instruction from them to send out the revised resolution to all shareholders, or follow up on a lack of a call.

3.15 The EGM went ahead as planned on 21 December 2009 at the offices of 'E' Ltd. In attendance were Mr 'B' and Ms 'C' with the Respondent in attendance as an observer. The revised special resolution was passed. The three daughters did not attend the EGM.

3.16 The shares held by the three daughters were re-designated as C shares and therefore their voting rights were removed and the directors, Mr 'B' and Ms 'C', declared different levels of dividend for each class of share, resulting in the non-participating daughters receiving fewer dividends than the company directors.

HHJ Pelling's comments

3.17 In his judgment, HHJ Pelling QC made the following comments and observations relevant to this matter:

a) He considered that it was Mr 'B' who spotted the error in the drafting of the special resolution and not the Respondent;

b) He accepted that Ms 'C' had direct contact with Miss 'L' and Miss 'M' and informed them that the resolution would have no impact on them. The two sisters then informed Miss 'N' of this conversation. He goes on to comment that he considers that the daughters would have attended the EGM had they known that they would have their voting rights removed.

3.18 Judge Pelling concluded that an agreement or combination was arrived at in the course of a conversation or conversations that took place between the Respondent, Mr 'B' and Ms 'C' between 10 December 2009 and 21 December 2009. There is no evidence that such discussions took place and the judge accepted that:

> *'I accept that this is an inference that I have drawn but in my judgement it is an inference that is close to being obvious.'*

Representations from the Respondent

3.19 The Respondent explains in his witness statement in the civil proceedings that no-one at 'E' Ltd, including himself, had the knowledge or expertise to do any form of company statutory work such as drafting special resolutions and notices. It would therefore be usual for the work to be sub-contracted out to a specialist company, such as 'R'.

3.20 The instructions were given to 'R' on the telephone and the Respondent states that, as a result of pure error on the part of 'R', the original documentation did not provide for the C shares to have no voting rights.

3.21 The Respondent states that he identified this error whilst he was dealing with the filing of the relevant documentation internally and he contacted Mr 'S', an employee at 'R', on 4 December 2009.

3.22 In his email to 'R' the Respondent stated that the resolution 'does not specify about the 'C' shares in terms of voting rights nor dividends. This may well be to our advantage as I have has a phone call from the managing director who is adamant that the 'C' shares should have no voting rights. Will this cause a problem that the notice does not state the details of the 'C' shares.'

3.23 In his witness statement, the Respondent explains that he did not know the implication of the notice being wrong, if it was wrong.

3.24 The Respondent also explains at paragraph 49 of his witness statement what he meant by 'this may well be to our advantage'. He states that if he could avoid having the Special Resolution redrafted and new notices sent out, he would be able to avoid a difficult conversation with Mr 'B' explaining 'R's error, the blame for which would ultimately rest

with the Respondent. He notes that if Mr 'B' was caught at the wrong moment he could be particularly difficult and tough and therefore it was a conversation he was keen to avoid having. The Respondent has stated that he did not in any way mean an advantage to himself or anyone else in respect of the daughters not getting proper notice that their ordinary shares in 'A' PLC were to be reclassified as non-voting shares.

3.25 In relation to the sending of the amended special resolution just to Mr 'B' and Ms 'C', the Respondent has explained in his witness statement that, at that time of year (being December), he was extremely busy due to the upcoming January tax filing deadline. He therefore dealt with things and moved on, even if that meant 'putting an issue in someone else's court'. In sending the amended special resolution to the directors of 'A' PLC, The Respondent considered that the matter was off his desk.

3.26 The Respondent states in his witness statement that he has checked and cannot find any record of having received a call from 'A' PLC as he had requested. He states that, had he been instructed to send out the revised special resolution to all shareholders, he would have done so. The Respondent was aware that Ms 'C' had been in contact with her sisters and so may well have thought that she would have dealt with it. He also notes that, at this stage, there were no difficulties between the parties.

3.27 The EGM was attended by Mr 'B', Ms 'C' and the Respondent at the offices of 'E' Ltd. The Respondent states that he was in attendance only as an observer and to answer any questions in his capacity as the auditor/accountant of 'A' PLC.

3.28 The Respondent states that he was surprised that none of the daughters attended the EGM as it had been arranged for the morning of 21 December 2009 to allow Miss 'N' to attend so that she could return to London after the meeting for work.

3.29 In his letter to ICAEW on 11 August 2017 the Respondent states:

> *'You will see from e-mails previously that Ms 'C' was often the liaison between her sisters. Three of the C shareholders had tendered their apologies (Mr 'O', Mr 'B' and Mr 'Q") as they had a business meeting. The sisters were expected to attend. It was not unusual for the sisters to miss meetings and not apologise. The Judge suggested they should have been telephoned. In hindsight I wish they had been but I would not normally telephone people for non-attendance, especially as they had been sent proxy forms, which again had not been completed and sent in.'*

3.30 The Respondent, in his witness statement, states that:

> *'Of course, whilst I appreciate now that no notice of the special resolution was provided to the claimants [the daughters], at the time of the meeting I can honestly say that the problems with the notices not being sent to the claimants did not occur to me. As far as I was concerned, everything was in order.'*

3.31 The Respondent goes on to say that, at the EGM, he did not think for a second that the daughters did not know about the terms of the special resolution that was being voted on or that they would have objected. His impression was that the daughters had little interest in the working and management of 'A' PLC and were only interested in their dividend payments. He considers that they knew and understood what was being proposed.

3.32 It is the Respondent's understanding that it was never Mr 'F's intention that the daughters would collectively have a controlling influence over 'A' PLC and the Respondent thought this was understood by all parties. He states that it was Mr 'F's business philosophy that to have a say in the business, you needed to be part of it so, as far as he was aware, there was no disagreement and everyone, including the daughters, were happy for the special resolution to be passed.

3.33 In relation to the special resolution, he considers that the daughters were getting the dividends that they wanted and that was the extent of their interest. The ability of the directors to take enhanced dividends in lieu of salary made complete sense from a tax planning perspective and was in everyone's interest. This included the daughters as the tax saving would result in 'A' PLC being more profitable, which would be in the shareholders' interest. He states that there was never any intention on his part to cause the daughters to be in a worse position or to do anything underhand behind their back.

The IC's Conclusion

3.34 In considering the service of the EGM notice and the special resolution on shareholders, PCD note that under the applicable company law, it is the responsibility of the company directors to prepare and serve such documentation and not that of the auditor or other professional advisors. It is acceptable for the company directors to instruct a third party to prepare and serve the notices on their behalf.

3.35 It is accepted by the Respondent that he was requested by 'A' PLC to prepare the EGM notice and the special resolution on behalf of the company. The Respondent has stated that he did not have the specialist knowledge to able to do this himself and so he outsourced the drafting of the documentation to a specialist company. This is appropriate as the Respondent did not consider that he had the required knowledge to draft the documentation himself.

3.36 The IC considers that an experienced professional accountant would be aware of the notice period required for calling a company meeting and the requirements for resolutions to be passed at those meetings.

3.37 Whilst noting that it is the company's responsibility to issue notices of EGMs, the Respondent did serve the original notices on all the members of 'A' PLC in an appropriate timescale of 21 clear days prior to the arranged meeting. It is not clear if the Respondent was given specific instruction by 'A' PLC to serve the documentation to all the members of the company. However, given that the documentation was sent out on behalf of the Respondent, it would be reasonable to conclude that such an instruction was given.

3.38 After the error in the special resolution was identified, the Respondent did instruct 'R' to provide the corrected documentation. However, the Respondent only sent the revised special resolution to Mr 'B' and Ms 'C' and not to the other shareholders.

3.39 These documents were forwarded by the Respondent to Mr 'B' and Ms 'C' on 10 December 2009, 11 days before the EGM, less than the 21 day period required.

3.40 Given that the Respondent served the original notice and special resolutions on all shareholders, it would appear that he was given the instruction to do so. The Respondent sent the revised documentation only to the director/shareholders, Mr 'B' and Ms 'C'. It is not clear whether he had been given any instruction to only send this revised documentation to the director/shareholders, or if there was an expectation that he would serve this documentation on all shareholders.

3.41 The IC expects that the Respondent would clarify the instructions for service of the documentation, given that the original documents was served on all shareholders by the Respondent 's firm. Since the distribution of the revised documentation by the Respondent differed from the original, the IC would expect that this would have been highlighted to the director/shareholders and advice given to them regarding the required service of documents on all shareholders.

3.42 The IC would also expect that the Respondent should have informed the directors that there was insufficient notice before the meeting as prescribed by the applicable company law and that the EGM should be moved, or agreement should be obtained from all shareholders for the meeting to be conducted as planned.

3.43 The IC notes that it is possible for an EGM to go ahead with less than 21 days' notice if it is agreed by a majority of shareholders holding 95% of the voting rights of the company. However the Respondent did not advise the directors of 'A' PLC of this and such agreement was not obtained in this case as only Mr 'B' and Ms 'C' were aware that the resolution had changed.

3.44 The result of this was that the three daughters not employed in the business were not aware that the purpose of the meeting was to remove the voting rights of their shares. They did not attend this meeting and so their voting rights were removed without their knowledge and consent.

3.45 The Respondent attended the EGM as an observer. He states that he considered that it was not his place necessarily to question the attendance at the AGM.

3.46 The Respondent says that he believes that the intention of Mr 'F' was not that his daughters would control the company as they were not 'in the business' but would be able to participate in the dividends as this was tax efficient. He therefore considered the removal of voting rights to be consistent with Mr 'F's wishes. This however does not detract from the fact that the legal requirements for the meeting were not carried out and it is for the shareholders to vote on. The daughters were not given the appropriate opportunity to do so.

3.47 In failing to either circulate the revised special resolution to all shareholders or to advise Mr 'B' and Ms 'C' that the revised resolution should be circulated to all shareholders and by failing to alert any of the shareholders to the fact that the required notice of EGM would no longer be met, PCD consider that the Respondent has rendered himself liable to disciplinary action. In reaching such a conclusion PCD has also taken into account the finding by HHJ Pelling that the Respondent had conspired, in December 2009, to injure by unlawful means in respect of an improper Special Resolution of 'A' PLC to remove the voting rights of the class of shares held by three of Mr 'F's daughters. Under Disciplinary Bye-law 7.4b (or 7.3b at the time of the events) this finding is prima facie evidence of the facts found.

4 Complaint 2 - Breach of Ethical Standard

4.1 As set out in the background above, the Respondent held several positions related to 'A' PLC and the 'F' family. The Respondent's various roles are set out as follows:

- Personal adviser to Mr 'F' and his businesses from 1983 until his death in 2007.
- Joint trustee of the 'D' from 1993.
- The RI responsible for signing the audit report on 'A' PLC for the years ended 31 March 2002 to 2007 and 2010 to 2013. The Respondent 's business partner, Mr 'G', was the audit partner who signed the audit reports for the 2008 and 2009 year ends of 'A' PLC.
- Joint executor of Mr 'F's estate following his death on 17 February 2007.

4.2 Mr 'F' held 54.3% of the voting rights of 'A' PLC at the time of his death on 17 February 2007 and therefore held a controlling interest in the company.

4.3 Following Mr 'F's death on 17 February 2007, the Respondent was appointed as a joint executor for the Estate of Mr 'F'. The Respondent was an executor along with Mr 'J' and Ms 'C'. The Respondent has informed ICAEW that he was not previously aware that he was being appointed as an executor of Mr 'F's estate and that probate was granted on 29 February 2008.

4.4 As described in section 2 above, the executors of Mr 'F's estate were involved in a court case against the law firm 'K' for negligent advice in respect of tax advice relating to the MBO of 'H' PLC which resulted in a significant tax bill on the estate.

4.5 If the litigation failed, the executors would have been personally liable for any costs if there were insufficient assets held in Mr 'F's estate. As a result the executors decided to continue to hold the 'A' PLC shares in the estate to ensure that it held sufficient assets to cover the tax bill should the litigation fail. The Respondent has informed us that Mr 'F's will stated that his shares in 'A' PLC should be distributed equally among his four daughters.

4.6 Subsequently, Mr 'F's daughters wished for the shares held in the estate to be transferred to them so that they can benefit from dividends being paid by the company. These shares were transferred to the daughters following their agreement to sign the 2009 Options as set out above. The company's annual return shows that these shares were transferred on 22 December 2009.

4.7 Therefore between 17 February 2007 and 22 December 2009, a majority shareholding in 'A' PLC were held by the executors in trust for Mr 'F's daughters, which included The Respondent. Mr 'G' acted as the RI for the audit of 'A' PLC during this time.

4.8 The shares were transferred from the estate to Mr 'F's daughters on 22 December 2009 and so, for the year ended 31 March 2010 onwards, The Respondent, in his role as executor, did not have authority over the shares and so considered he was able to return to his position as RI, signing the audit report on the financial statements of 'A' PLC.

4.9 However, in addition to his role as executor, the Respondent was also a joint trustee of the 'D', with Mr 'J'.

4.10 The 'D' held two sets of options over the shares granted to Mr 'F's daughters, the 2004 Options and 2009 Options.

4.11 As set out above, upon the exercise of the Options, 'D' would acquire all the shares in 'A' PLC owned by the individuals named in the Option agreement. As a trustee of 'D', the Respondent was in a position to influence when and if these Options were exercised.

4.12 Paragraph 7 of Ethical Standard 2 states that an audit firm or any partner in the audit firm should not hold a direct or indirect financial interest in an audited entity. After the options were put in place in October 2009, the 'D' held a material indirect interest in 'A' PLC as the options entitled it to purchase more than 50% of the shares in 'A' PLC. The Respondent was one of two trustees of 'D' so he was in a position to influence the investment decisions of 'D'.

4.13 Ethical standard 2 paragraph 19 considers whether a trustee relationship would result in the prohibition of a firm or engagement partner acting as auditor if a direct or indirect financial interest is held by the trust. Essentially, no issue would arise as long as the trustee is not:

- a beneficiary of the trust; and
- the financial interest held by the trust in the audited entity is not material; and
- the trust cannot exercise significant influence over the audited entity; and
- the relevant person (the Respondent) does not have significant influence over the investment decisions made by the trust

4.14 In this case, 'D's only asset was the options which, if exercised, would give it a controlling interest in 'A' PLC and as one of two trustees, The Respondent had significant influence over whether those options would be exercised. Therefore, The Respondent was not permitted to act as auditor as he held an indirect financial interest in 'A' PLC. The

Respondent was not permitted to act as auditor between 21 October 2009 (when the options were granted) and 22 February 2012 (when the options were exercised). During this time the Respondent signed the following audit reports as RI:

- Year ended 31 March 2010, signed on 25 August 2010; and
- Year ended 31 March 2011, signed on 28 July 2011.

4.15 The options were exercised on 22 February 2012 and the shares subsequently sold to Mr 'B' and Ms 'C' on 19 March 2012 as documented in the original Annual Return for the period filed at Companies House. Following the court case against the Respondent, the Companies House filings were amended to show that the C shares were, in fact, voting shares and were held by the Respondent (and Mr 'J') as the trustees for 'D'. The IC considers that, at the time, the Respondent believed that the shares had been transferred and did not remain in 'D'. Therefore the IC does not consider that the Respondent was in breach of Ethical Standard 2 when he signed the audit reports for the years ended 31 March 2012 and 2013.

Representations from the Respondent

4.16 In his letter to ICAEW dated 11 August 2017**,** the Respondent states that the options were the idea of Mr 'J'.

4.17 In his letter to ICAEW dated 24 April 2018**,** the Respondent states:

> *'Mr 'J' incorrectly, so I have been told since, advised that the Trust was a good vehicle for the options when the shares were transferred from the 'F' Estate to his daughters on 28 November 2009. I have since been advised that this course of action did not need to happen in this manner. During the course of litigation, I was told that a global indemnity should have been taken when the shares and property were transferred. If this had happened there would have been no necessity for the second agreement through the options and therefore there would have been no valuation necessary. Unfortunately I seem to have been caught by poor advice from Mr 'J' who unfortunately dies during the litigation. Any shortfall on the Estate would have been the beneficiaries' responsibility. I believe Section 19* [of Ethical Standard 2] *did not apply as I was not a potential beneficiary and the Trust had no material assets. I also did not have control as it was a discretionary trust. We were definitely not able to exercise control over the audited entity as we never had control or ownership of the share in 'A' PLC.'*

4.18 In his witness statement at paragraph 89 the Respondent states that in exercising the options,

> *'I freely accept that my concern was not with* [the daughters] *individually but with doing what I thought was best for the Estate of Mr 'F' (which of course indirectly benefitted the Claimants).'*

Conclusion

4.19 When signing the audit report of 'A' PLC on 25 August 2010 and 28 July 2011, the Respondent held an indirect financial interest in 'A' PLC as a trustee of the 'D' which held unilaterally exercisable options over a controlling interest in the company.

4.20 The Respondent should have been aware that in his role as joint trustee of 'D' he held the ability to acquire and control a controlling interest in 'A' PLC at the time that it was an audit client of his firm. PCD notes that, as described in section 4, the Respondent states that he was not aware at the time that the special resolution was not valid and therefore did not consider that the 'C' shares carried voting rights.

4.21 In being the joint trustee of ‘D’ which held the options over a controlling interest in ‘A’ PLC, and having the ability to exercise these options, the IC considers that the Respondent should not have been in a position to influence the outcome of the audit of ‘A’ PLC.

4.22 Between 31 March 2010, being the first financial year end of ‘A’ PLC after the 2009 Options were granted that the Respondent was responsible for the signing the audit report, and 19 March 2012, the date on which the shares in ‘A’ PLC were transferred to Mr ‘B’ and Ms ‘C’. The Respondent was in breach of ES2 in that he was a person in a position to influence the conduct and outcome of the audit and was a trustee of a trust which held an indirect financial interest in ‘A’ PLC and therefore might influence the actions of the audited entity.

4.23 The IC notes that during the period the Respondent was a joint executor of Mr ‘F’s estates and the estate held the shares in ‘A’ PLC, he was not the Audit Partner responsible for the audit ‘A’ PLC and that he obtained advice from ICAEW to confirm that his firm was permitted to continue to act with the condition that he was not involved in the audit.

5 Member’s representations

5.1 ICAEW wrote to the Respondent on 28 June 2019 to provide him with a copy of this report and obtain his final representations.

Representations from the Respondent

5.2 Mr Ross Burrows, a barrister, responded on the Respondent’s behalf.

5.3 Mr Burrows indicates that the court case was being looked after by the Respondent’s professional indemnity insurers and that he is the second barrister to be instructed. Mr Burrows was appointed after, he contends, it was agreed that the first set of lawyers, who represented the Respondent in the court case, were conflicted.

5.4 Mr Burrows considers that, in his view, there is doubt whether the Respondent was represented comprehensively at trial and in his view, the case could, and should, have had an entirely different outcome. In particular Mr Burrows notes that neither Mr ‘B’ nor Ms ‘C’ were called to give evidence in the trial.

5.5 It is therefore concluded by Mr Burrows that there is doubt on the outcome of the decisions and, had the outcome of the case been different, in his view, there would not be prima facie evidence of facts found under the Disciplinary Bye-Laws.

5.6 Mr Burrows also highlights that the Respondent made no financial gain from his actions and therefore considers that the Respondent’s decision not to send the form to everyone or to advise Mr ‘B’ and Ms ‘C’ that proper notice was needed, was unlikely to be intentional. He adds that this error in the documentation was made by ‘R’ and was not designed or colluded from the outset.

5.7 Mr Burrows states that the Respondent has informed him that he wanted the sisters to attend the meeting on 21 December and that the date was selected as all the sisters could attend. Mr Burrows considers therefore that there was no intention on the part of the Respondent to avoid the sisters receiving the new resolution or to deliberately fail to advise Mr ‘B’ and Ms ‘C’ that the resolution could not be effective.

5.8 Mr Burrows has the view that the ‘K’ case, which failed, was financially motivated and Mr Burrows states that one could conclude that, had it been successful, the issue surrounding the Respondent would not have been identified. Mr Burrows considers that the error made on the resolution was a typo by ‘R’ and that typos, such the one made by ‘R’, occur daily and it was used by the sisters to extract money back, using the Respondent as a scapegoat.

5.9 Mr Burrows comments that, 'if the Committee conclude that there is still a prima facie case, in light of the new information shared within this representation, it is also worth considering the definition of "deliberate", which refers to "intentional". The definition of "reckless" refers to being heedless of danger or the consequences of one's actions and the definition of incompetent includes "not having or showing the necessary skills to do something successfully".' Mr Burrows considers, in his view, that the judgement of its own volition does not 'complete the jigsaw' on whether the Respondent's actions were 'deliberate', 'reckless' or even 'incompetent'. Mr Burrows concludes that it is an extremely sad and unfortunate result of a professional outsourcing work, for a typo to have occurred and for this to be the only gateway for the sisters to recover a loss.

5.10 In relation to the second complaint, Mr Burrows notes that paragraph 5.23 of this report shows that "during the period The Respondent was a joint executor of Mr 'F's estates and the estate held the shares in 'A' PLC, he was not the Audit Partner responsible for the audit…" It is represented on the Respondent's behalf that this is indicative of his approach.

5.11 Mr Burrows states that in 2010 and 2011 the shares were in the names of the sisters having been transferred in 2009 and therefore the Respondent did not have control of shares as there were two trustees of the trust, which was a discretionary trust. The option to purchase the shares was not exercised in this period and, if it had, it required other intervention than just the Respondent. He concludes that there was no influence or effect regarding independence as the business was controlled by Mr 'B' and Ms 'C'.

5.12 Mr Burrows highlights that the effect of the court case on the Respondent has been life-changing to him and his family and the Respondent was not in a position to afford to bring a case of negligence to justify his true position in this case.

5.13 Mr Burrows states that if the committee were to conclude that the Respondent was incompetent (complaint 1(c)) then the Respondent would not look to challenge, except if the decision was purely based on the finding of the court case.

5.14 Mr Burrows also notes that the Respondent is no longer in the accountancy profession. The costs of the court case to the Respondent have been significant and he considers that there should be no further penalty or punishment, to include no financial penalty. Mr Burrows highlights that the Respondent personally contributed less than 2% of the total costs applied for in the case and the Professional Indemnity insurer covered the bulk of the costs on which Mr Burrows describes as 'something that was "technically" uninsured'.

PCD's response to the Respondent's representations

5.15 The IC notes Mr Burrows' comments and notes that the underlying facts are not in dispute. Whether the outcome may have been different if the Respondent had had alternative legal representation is speculation. Those proceedings are concluded.

5.16 Mr Burrows correctly comments that the Respondent was one of two trustees of 'D' and therefore he did not have sole control of the trust and did not have the sole ability to exercise the options. As is detailed in the report, the Respondent's fellow trustee was Mr 'J' who was also a joint Executor of Mr 'F's estate and was therefore also potentially personally liable for losses resulting from the failure of the litigation against 'K'. As such, the IC considers that their interests would have been aligned so any decisions taken by the trustees would be jointly taken in common. Therefore, as explained in paragraph 5.14 of this report, the IC considers that the Respondent had significant influence over the investment decisions of the trust resulting in him holding an indirect financial interest in 'A' PLC at the time he was auditor.

Conclusions and reasons for decision

The Respondent attended the sanctions hearing and made submissions on his own behalf.

The Committee took into account that the Respondent admitted the complaint at 1(c) and that the IC had been content not to pursue Complaints 1(a) or (b). While the Committee agreed that the failure by the Respondent to send the revised special resolution to all shareholders and/or advise Mr 'B' and Ms 'C' that the revised special resolution should be sent to all shareholders; or to advise Mr 'B' and Ms 'C' that proper notice of 21 days for the Extraordinary General Meeting to pass the special resolution could no longer be met was neither deliberate or reckless, it concluded, from all the documentation in this case, together with the Respondent's submissions, that if the Respondent's behaviour was incompetent, it was at the very lowest level of incompetence and more akin to an honest mistake.

As far as complaint 2 was concerned, the Committee noted the Respondent's admission and agreed with the submissions made on behalf of the IC that a line had been crossed by the Respondent when he signed the audit reports for 'A' PLC when he was a trustee in the 'D' (which held options to buy the majority of the shares in 'A' PLC) and that he was therefore conflicted, in breach of the Auditing Practices Board Ethical Standard 2.

The Committee had regard to His Hon Judge Pelling's judgment but found themselves at variance with the inference that he drew which led him to conclude that an agreement or combination was arrived at in the course of a conversation or conversations that took place between the Respondent, Mr 'B' and Ms 'C' between 10 December 2009 and 21 December 2009, from which he ruled that the Respondent was a party to a conspiracy. The Committee noted His Honour's remarks, 'I accept that this is an inference that I have drawn but in my judgement it is an inference that is close to being obvious' but very respectfully disagree. The Committee had regard to the submissions made by Mr Ross Burrows of Counsel on the Respondent's behalf in relation to the quality of his legal representation at the trial before His Honour Judge Pelling and while it is impossible for the Committee to form a view as to whether, had his case been put in a different way, judgment may not have been given against him, the outcome of the case in the light of all the material the Committee has seen was surprising.

Matters relevant to sanction

The Committee had regard to mitigating and aggravating factors. It concluded that there were no particular aggravating factors in this case and, on the contrary, a great deal of mitigation. It accepted the submissions made in writing by Mr Ross Burrows of Counsel on the Respondent's behalf and found that the Respondent was sincere in his remorse for his actions, which have led to devastating consequences, professionally and financially, for himself and his family. The Respondent said that his files indicated that the ICAEW's Ethics Department had been consulted about the potential conflicts on a number of occasions and he had not benefited financially in any way from his breach of the APB standards as alleged in Complaint 2. The Committee took into account the positive reference provided by Mr 'V', a former client of the Respondent. As stated above, the Committee regarded the Respondent's conduct as at the lowest level of seriousness. The Committee accepted the Respondent's Confidential Statement of his financial circumstances and were satisfied that he could not afford to pay a financial penalty.

Sanction Order

The Committee accordingly imposed no sanction in respect of Complaint 1(c) and a reprimand in respect of Complaint 2.

The Committee had regard to the IC's application for costs in the sum of £8975.00 and considered that the costs sought were appropriate and proportionate. However, it was apparent that the Respondent did not have the means to pay costs of that magnitude and accordingly, the Committee awarded a contribution to the IC's costs, to cover the sanctions hearing, of £500, to be paid by monthly instalments of £40, the final instalment to be in the sum of £60.

Decision on publicity

Publicity to be effected in the usual way.

Chair	Ms Rosalind Wright QC	
Accountant Member	Mr Mike Ranson FCA	
Non Accountant Member	Ms Rachel Forster MBE	**039076**

2. **Mr James Phipps BSc ACA** of
Isle of Wight, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 September 2020

Type of Member	Member

Terms of complaint

On or around 11 May 2018, Mr James Phipps assaulted Ms X and was convicted in the United States District Court for the Eastern District of Virginia on 2 August 2019 for an offence of Simple Assault in violation of Title 18, United States Code, Section 113(a)(5)

Mr James Phipps is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a (effective from 15 October 2018).

Hearing date	16 September 2020
Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes by admission
All heads of complaint proven	Yes
Sanction and costs	Severe reprimand and costs of £5060.00
Procedural matters and findings	Mr James Phipps admitted the complaint and the hearing was therefore a Sanctions Hearing
Parties present	James Phipps (the Respondent) who was unrepresented. The Investigation Committee was represented by Ms Silpa Tozar
Hearing in public or private	The hearing was conducted by video link and was held in public
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's bundle which includes the Respondent's representations; the Respondent's comments; 13 character references submitted by the Respondent; letter from the Respondent to the United States Judge at the District Court for the Eastern District of Virginia.

The Investigation Committee's case

Background

Mr James Phipps (hereinafter the Respondent) was at the time of the matters complained of working for 'A' within its assurance (audit) practice. 'A' wrote to ICAEW on 18 September 2019 to advise that the Respondent had pleaded guilty to 'charges' in the 'District Court E.D.' relating to an incident where he became intoxicated on a flight and assaulted a female passenger.

ICAEW's Professional Conduct Department (PCD) obtained confirmation from the United States Attorney's Office that on 2 August 2019, the Respondent pleaded guilty at the United States District Court located in the Eastern District of Virginia, to the following offence:

> 'On or about May 11 2018, over the high seas in the special maritime and territorial jurisdiction of the United States, the defendant, James P Phipps, did knowingly and intentionally assault a female victim, "Jane Doe", while aboard nonstop British Airways Flight 292 from Washington Dulles International Airport in Dulles, Virginia, located within the Eastern District of Virginia, to London Heathrow Airport in the United Kingdom. (In violation of Title 18, United States Code, Section 113 (a) (5))'.

The United States District Court Judgment records the nature of the offence as a 'Simple Assault'

On or around 11 May 2018, the Respondent boarded a flight from Washington Dulles International Airport in the Eastern District of Virginia destined for London Heathrow Airport. On that flight, he was seated in an aisle seat and a lady identified as 'Jane Doe' (hereinafter Ms X) was seated in the aisle seat which was two seats away from the Respondent. The middle two seats were empty. The Respondent and Ms X were not known to each other.

While the aircraft was in flight, Ms X was awoken by the Respondent touching her without her permission. He leaned over to her, grabbed the back of her neck and pulled her towards him to kiss her. Ms X pushed him away and yelled "No! Get the f--- off of me!" The Respondent then took Ms X's hardcover book and threw it at her, hitting her in the face. Ms X reported the incident to a flight attendant and she was moved to another seat. The Respondent was arrested on 1 July 2019 in relation to this incident.

The Respondent was charged with the offence set out above and appeared before the United States District Court for the Eastern District of Virginia on 2 August 2019 where he pleaded guilty to one offence of Simple Assault.

On 30 August 2019, he was sentenced to 30 days supervised probation with conditions. These conditions were –

> 10 days imprisonment;
> Followed by 10 days of home confinement with electronic monitoring;
> $25 special assessment payment by 30 September 2019; and
> Upon completion of incarceration and home confinement, if the supervised probation time is not complete the remainder of the supervision will be terminated.

The following aggravating features were highlighted by the prosecutor:

i. "…She was awoken by [the Respondent] who had his hands all over her torso"
ii. "He leaned in rubbing her chest and breasts"
iii. He grabbed the victim by the back of her neck and pulled her toward him, trying to kiss her"
iv. "[The Respondent] mocked her and threw her hardcover book at her face"
v. "[Ms X] began seeing a therapist about the incident"
vi. "[Ms X] continues to live with a fear of flying because of this assault"

The following mitigating features were highlighted by the Respondent's legal team –

i. "He comes before the court humbled and full of remorse"
ii. "His actions are completely out of character"
iii. "…he is mortified by his involvement in the instant offence, of which he has no memory, [the Respondent] takes full responsibility for his actions"
iv. "[The Respondent] has been sober since soon after the incident"

The Respondent's written representations

PCD wrote to the Respondent on 17 October 2019 to inform him of the investigation into this matter and requested him to provide any documents and information regarding the complaint.

The Respondent replied by letter dated 8 November 2019, and provided a copy of the charging document and a copy of the judgment. In his letter, the Respondent explained that on the day of the incident he was "drinking heavily, both beforehand and on the flight, and was involved in an altercation with another passenger". He explained that he had tried to kiss her without her permission and that when she rejected him and pushed him away, he "took her hardcover book and threw it at her, hitting her in the face".

The Respondent states he has "no recollection of this event" and furthers states that he did not face any repercussions at the time.

The Respondent explains he was "arrested on 1 July 2019 and charged with misdemeanour simple assault". He hired a lawyer and "began the process of discovery". He further explains that the prosecution interviewed passengers seated around him on the flight and members of the cabin crew. He states none of the people interviewed recalled "hearing or seeing the incident"; however all persons interviewed recalled the Respondent "consuming alcohol and/or appeared to be drunk".

He confirms that he did plead guilty to "one count of misdemeanour simple assault" and that on 30 August 2019 he was sentenced to "10 days of incarceration in a detention centre". This was followed by "a period of 10 days of house arrest".

He explains that the period between his arrest and sentence happened in a relatively short space of time and that after completing his sentence he moved back to the UK on 21 September 2019. His focus was to rebuild his life and seek a new source of income so he could pay his significant legal fees. On 14 October 2019, he commenced his new employment.

He states that it was his intention to notify ICAEW of his new employment and to investigate whether he was required to disclose his conviction. Mr Phipps has apologised for any inconvenience this has caused and states that it was never his intention not to comply with ICAEW bye-laws.

He explains that he has [private].

The Respondent was given time off work to return home in the UK to think carefully about whether he wanted to continue his employment in the United States. It was during the flight back to the UK that he had a 'black out' and committed the offence. The Respondent states that he has no memory of his actions, but takes full responsibility for what he did.

Upon returning to the UK in May 2018, the Respondent [private].

[Private].

He highlights that he has been whole-heartedly remorseful for his conduct and that he expressed sorrow throughout the court proceedings. He is confident that this was "an isolated incident which will never happen again".

The Respondent states that he commenced employment with 'B' Limited on 14 October 2019 and that he did disclose this incident to his Line Manager and the company's HR department.

On 18 April 2020, the Respondent signed a Response form admitting the facts alleged in the complaint above.

Investigation Committee's submissions

It is submitted that the Respondent's conduct is likely to bring discredit on himself, ICAEW or the profession of accountancy.

Sanction and Costs

The Committee had regard to the current *Guidance on Sanctions* and, in particular, to Section 4. The starting point for a criminal conviction resulting in a term of imprisonment is recommended to be exclusion. The Committee reminded itself that it has a duty to protect the public and to uphold the reputation of the profession and of the Institute as an effective regulator.

The Committee considered the aggravating and mitigating circumstances in the case.

Aggravating factors included the seriousness of the criminal offence of which the Respondent was convicted and the fact of his period of imprisonment, albeit brief. The Committee had regard to the traumatic effect the assault had on Ms X. He had not reported the conviction to the Institute himself, but, rather, his former employers had done so. A conviction of this nature inevitably reflected badly on the reputation of the profession and of its members and the public had the right to be protected against behaviour of the kind alleged in this case.

On the other hand, the Committee considered that there were a number of mitigating factors to be taken into account. The Respondent was of good character and was currently employed in a responsible position in a firm where his membership of the Institute was a required factor on

appointment, although he assured the Committee that his current employers knew of these proceedings and were prepared to continue his employment. He had fully co-operated with the Institute's investigation. He assured the Committee that [private] and that the assault was out of character and an isolated incident. The Committee took into account 13 supporting personal references which he had submitted to the US trial judge, and referred to the institute in his Response form, several, admittedly, from members of his own family.

The Committee took the view that an exception could be made in this case to the recommended starting point for an offence of this kind and that a severe reprimand was the appropriate sanction in the Respondent's case.

The Investigating Committee applied for a contribution to its costs of £5060.00 which the Committee deemed appropriate and proportionate and within the Respondent's means to pay and accordingly awarded costs to the Institute in that sum.

Decision on publicity

Publicity to be effected in the usual way.

Chair	Ms Ros Wright QC	
Accountant Member	Mr Martin Ward FCA	
Non Accountant Member	Ms Eileen Neilson MBA	**051810**

3. **Mr David Charles Nathaniel Freedman FCA** of
London, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 September 2020

Type of Member Member

Terms of complaint

1. Between 18 June 2015 and 31 December 2016, Mr David Charles Nathaniel Freedman FCA allowed the client money bank account of his firm 'A' to be used by 4 clients as a bank account when he should have known that he should not do so, so that the client did not have to use their own bank account while they were in dispute with the bank over loans on which they had defaulted.

Mr David Charles Nathaniel Freedman FCA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b

2. Between 1 January 2017 and 8 February 2018, Mr David Charles Nathaniel Freedman FCA allowed the client money bank account of his firm 'A' be used by 4 clients as a bank account in breach of Clients' Money Regulation 8A.

Mr David Charles Nathaniel Freedman FCA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c

3. On 27 June 2016, Mr David Charles Nathaniel Freedman FCA signed an audit report on the financial statements of 'B' Limited for the year ended 30 September 2015 during which period he processed transactions through the company's client account that formed substantially all the transactions in those financial statements, and in doing so failed to comply with APB Ethical Standard 5 paragraph 158 and/or APB Ethical Standard 5 paragraph 165.

Mr David Charles Nathaniel Freedman FCA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b

Hearing date	16 September 2020
Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes by admission
All heads of complaint proven	Yes
Sanction	Severe reprimand and Condition that the Respondent undertake within a year of this decision a suitable course in ICAEW's Client Money rules and satisfy the PSD that he has satisfactorily completed it.

	The Respondent was ordered to pay costs of £7261.00
Parties present	Mr David Charles Nathaniel Freedman (hereinafter, the Respondent) who was unrepresented Ms Sonia Stean represented the Investigation Committee
Hearing in public or private	The hearing was by video link and held in public. As the matters complained of were admitted, the hearing took the form of a Sanction hearing.
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's bundle

The Investigation Committee's case

The matter was brought to the attention of ICAEW by the Charity Commission. 'B' Limited, a registered charity, whose trustees were Mr 'C' Mr 'D' and Mr 'E', three brothers, had not submitted accounts to the Charity Commission for three years. The Charity Commission opened a case to ensure the charity brought its submissions up to date.

'B' Limited engaged the Respondent, through his practice 'A', to prepare the missing accounts.

During their engagement with 'B' Limited to ensure their records were brought up to date, the Charity Commission identified that the charity had defaulted on loans made to the charity by their bankers. It was also identified that as a result of the issues with their bankers, the trustees of the charity had requested that the Respondent open client accounts in the name of the charity and its trading subsidiary 'F' Limited through which all banking activity would take place until the dispute with the banks had been resolved.

As the companies had defaulted on their loans, the banks had called on their security. 'B' Limited disputed that the bank had security and 'F' Limited disputed swap charges being levied by the bank. By routing the charity funds through a bank account in the name of 'A' it meant that the banks could not use the funds to settle the loans that the charity had defaulted on.

During its review, the Charity Commission identified that the main activity on the two client accounts maintained by the Respondent appeared to be related party transactions rather than charitable activity.

The Charity Commission enquired into this matter and was not satisfied with the response from the firm and so reported the matter to ICAEW to consider.

PCD investigated the matter and made enquires of the Respondent, the sole principal of the firm. The Respondent confirmed that he was aware of the issues with the banks and that he had opened the client money accounts as requested by 'B' Limited and 'F' Limited.

The conduct related to the use of the client accounts has been split into two complaints, as Clients' Money Regulation 8A did not come into effect until 1 January 2017.

The Respondent was approached in February 2014 to act for 'B' Limited and 'F' Limited. He was advised at the time by the trustees that the companies were in significant arrears in the preparation of annual accounts, tax returns, annual returns and other matters. No accounts had been filed at Companies House since 2010. The reason provided to the Respondent for the previous accountants ceasing to act was that they were unable to input the accounting records (which were in an old software system and Excel into their own software. The previous accountants formally resigned with effect from 11 April 2014.

The Respondent met with the three brothers on 4 February 2014.

Following this meeting the Respondent carried out further enquiries at Companies House. The Respondent notes that he

> ."*searched Companies House for each of the 4 limited companies [being 'B' Limited, 'F' Limited, 'G' Limited and 'H' Limited] and found receivers galore! I also checked for other directorships and found out about another 12 companies, some dormant and about 4/5 recently struck off, and Mr 'D' is also a trustee of about 8 other charities."*

The Respondent noted that the main company had been 'H' Limited, which was under the control of the brothers, and it was non-operational due to receivers being put in place by the bank in February 2011 in relation to all of its properties. 'G' Limited was a subsidiary of 'B' Limited which had receivers appointed by the banks in August 2012 in relation to exercising their security over the company's properties, which were subsequently sold to settle the company's outstanding debts. The Respondent was not instructed to act for these companies. The Respondent did note that 'H' Limited was 'clearly insolvent'.

The Respondent wrote to the previous accountants who provided the handover information by 8 April 2014 and the Respondent undertook Anti Money Laundering checks.

The Respondent documented his consideration of whether he was able to act for this client and concluded that he could. The Respondent identified that the major risk factors were:

> "*Clients' property empire was tumbling and they were firefighting the demands from Banks and H M Revenue & Customs. Client might use funds of one entity to pay for liabilities of another. As the client was firefighting the demands, clearly they had taken their eye off of filing compliance. Due to the above, identifying and ensuring compliance of related party transactions were a likely issue*."

In a letter to PCD the Respondent noted that due to the long-standing delays in filing accounts, 'B' Limited subsequently struck off the Companies House register in January 2015. The Respondent decided to take on the client to aid it to update its accounting position, aware that they were unlikely to be able to appoint alternative accountants.

The Respondent states that the accounts for the companies for the years ended 30 September 2011 to 2014 inclusive were completed by July 2015 and 'B' Limited was restored to the company register in September 2015.

‘B’ Limited was in dispute with ‘I’ and ‘F’ Limited was in dispute with ‘J’ over loans on which the companies had defaulted.

The Respondent set out these disputes in his letter to ICAEW dated 16 August 2017

Dispute between ‘B’ Limited and ‘I’

‘B’ Limited borrowed £220,000 over 10 years from ‘I’ in January 2010. ‘B’ Limited fell behind on repayments and ‘I’ called in the loan in 2013 and appointed receivers in 2015.

The directors accepted that the loan was outstanding, but disputed the bank's charge over the company’s assets, stating that a previous lender, ‘K’ Ltd, had a prior charge.

In his letter dated 16 August 2017 the Respondent states that in March 2017, ‘I’ accepted the directors' offer of £97,500 plus costs in full and final settlement of the loan. The balance of the loan at that time being approximately £167,500.

Dispute between ‘F’ Limited and ‘J’

‘F’ Limited borrowed £3,000,000 from ‘J’ secured against the company’s properties in 2008. At the same time ‘F’ Limited took out swaps with the bank.

From 2011, the company began to fall behind on repayments, and the quarterly swap charges were no longer being taken by the bank. The directors disputed the swap charges claiming that the loan had been mis-sold.

The bank required repayment of the loan and negotiations followed, with properties against which the loan was secured being sold or refinanced to repay the outstanding debt. By May 2014, the sum outstanding to the bank, excluding swap arrears, had been reduced from £2.83m in April 2013 to £218,700 in May 2014 as a result of the sale of the company’s property assets. The estimated sum due for swap charges was £330,000, resulting in a total debt of circa £548,000.

‘F’ Limited entered into negotiations with ‘J’ who accepted £375,000 in full and final settlement in October 2016 and the outstanding charges were settled.

The 2015 financial statements for ‘B’ Limited do state at note 16 that the directors have undertaken to personally discharge the sums owed to the banks by ‘B’ Limited and ‘F’ Limited. The 2015 audit file contained documents dated 23 June 2016 stating that the companies owed the directors the monies, on the basis that the director settled the debt with the banks. The file note states that the audit team were unsure if this was legally enforceable but indicated the directors’ intent.

In addition, there is a minute dated 11 October 2016 assigning the ‘F’ Limited loan to directors, however ‘J’ is not party to this assignment and so it is not clear if this was legally enforceable either.

Client accounts

The Respondent was requested by the three brothers to open client accounts on behalf of 'B' Limited, 'F' Limited, 'H' Ltd and Mrs 'L'. The opening and operation of the client accounts are detailed in section 4 of this report.

Complaints 1 and 2 – Clients' Money Regulations

Opening the client accounts
The Respondent has set out the reasons for the opening of client accounts in his letters to the Charity Commission and ICAEW.

The Trustees of 'B' Limited, being the three brothers, considered that they were unable to use the company bank accounts for ongoing transactions due to the position of each of the banks, as they considered that the banks could transfer any lodgement to the outstanding loan account, resulting in no working funds for 'B' Limited and 'F' Limited. The companies were unable to open bank accounts elsewhere due to the ongoing disputes with banks, and 'B' Limited had been struck off the company register as it had failed to file statutory accounts for several years. As a result, the Respondent was asked to open client accounts on their behalf as a temporary measure.

For 'B' Limited, the Respondent states that he was advised by the client that 'I' had closed the company's bank account in 2013. 'B' Limited could not open a new bank account as it had been dissolved at Companies House and was in the process of applying for restoration. Therefore, at the time the Respondent opened the client money account for 'B' Limited in June 2015, the company had been struck off the company register and did not legally exist. It was subsequently restored to the company register in September 2015.

The Respondent reviewed the bank transactions from the periods ending 30 September 2011 until the point when 'B' Limited ceased to use the account in 2013, to establish the pattern of transactions. The Respondent considered that 'B' Limited had operated the account 'normally' and no amounts had been transferred from the current account to the loan account by the bank, other than the monthly repayments and the charging of fees when the account became overdrawn. The Respondent also noted that lodgements received by 'B' Limited were utilised to make 'normal payments', rather than being taken by the bank to reduce the loan. 'B' Limited were only receiving an occasional donation.

PCD notes that the correspondence on the 2015 audit file shows that the bank first contacted 'B' Limited in relation to the loan falling into arrears in October 2013 with the matter referred to a debt collection agency in April 2015. The Respondent's review would therefore have covered the period prior to the default on the loan.

PCD also notes that during the course of the audit of the 2014 financial statements, conducted in July 2015 after the opening of the client accounts in June 2015, that the Respondent obtained copies of the 'B' Limited 'I' bank statements to December 2014 showing that the account was open but had not been used since 2013. This is contrary to what the Respondent had been informed by the trustees. Neither the 2014 nor 2015 audit files evidence that the 'I' accounts for 'B' Limited had been closed.

For 'F' Limited, the Respondent states that the bank account had been dormant for a long time. Due to the company's issues, it had lost most of its staff and as a result had lost the ability to carry

out transactions online as those senior individuals remaining at the company were not computer literate. The Respondent states that he attempted to communicate with the bank regarding the account but with no success. The Respondent considered that the client therefore needed short term assistance in managing its accounts.

The Respondent states that he did not expect

> *'a significant volume of activity on these accounts, based on what I had already seen of their previous history. I anticipated that there would be very few transactions. 'F' Limited had no properties which were producing rent and 'B' Limited only received the occasional donation. Accordingly, I expected the accounts to be very largely dormant and temporary in duration.'*

The Respondent states that he observed that 'J' were allowing normal operation of the bank account of 'F' Limited. He also states that he reviewed the correspondence with the company and the lenders and he considered that it was clear that the directors disputed the balance due and that a compromise agreement would be made.

As a consequence, the Respondent states that he did not consider that the operation of the client accounts was diverting funds away from the lenders. He considered that the lender could have 'acquired' the funds lodged in the company's bank accounts after they had called in the loans but had chosen not to do so. The Respondent concluded that operating the client accounts was not a way of 'channelling funds away from lenders'.

In addition to the client accounts for 'B' Limited and 'F' Limited, the Respondent was also asked to open client accounts for 'H' Limited and Mrs 'L'. In his letter dated 6 March 2018, the Respondent explained the reasons for opening the client accounts for 'H' Limited and Mrs 'L'. He says that the client had issues with its bankers and was worried generally about all of its bank accounts. Both 'H' Limited and Mrs 'L' had their own bank accounts but that these were not in an 'orderly state' and so the Respondent was requested to open accounts to assist with transfers between accounts as a matter of convenience. The Respondent states that this arrangement was only intended to be temporary until the financial matters were sorted out.

The Respondent indicated that he understood that the client accounts for 'H' Limited and Mrs 'L' would only be for a few transactions related to taxation and Companies House matters. The Respondent agreed to open the four client accounts.

Operation of client money accounts

The Respondent provided copies of the transactions in each of the four client accounts. This shows each of the accounts opened on 18 June 2015.

4.15. The following shows a summary of the transactions for each client account:

‘B’ Limited

Dates	Description	Amount £
1 July 2015	Funds received from ‘F’ Limited	702,000
1 July 2015	Funds transferred to Mrs ‘L’	(406,343)
1 July 2015	Funds transferred to ‘H’ Limited	(83,955)
1 July 2015	Company restoration fees	(10,644)
28 July 2015	Funds transferred to ‘H’ Limited	(120,000)
August 2015 – December 2015	Funds transferred to ‘H’ Limited	(16,000)
September 2015 – January 2017	Companies House fees	(3,734)
September 2015 – June 2017	Donations made	(20,500)
November 2015 – February 2016	‘A’ Limited fees	(43,368)
October 2016 – April 2017	Donations received	4,000
September 2015 – December 2017	Interest received	169
13 December 2016	Rates refund	181
14 July 2017	Legal fees	(1,800)
6 February 2018	Closing balance	(6)

'F' Limited

Dates	Description	Amount £
29 June 2015	Funds received from 'H' Limited	705,754
1 July 2015	Funds transferred to 'B' Limited	(702,000)
August 2015 – February 2016	'A' Limited fees	(288)
September 2015 – February 2016	Companies House fees	(26)
September 2015 – January 2017	Interest	58
11 November 2015	Surveyors fees	(1,989)
5 January 2016	Dilapidation funds received from 'M'	93,190
January 2016 – April 2016	Funds transferred to 'H' Limited	(94,690)
June/July 2017	Closing balance	(9)

'H' Limited

Dates	Description	Amount £
18 June 2015	Opening transfer	10
1 July 2015	Funds received from 'B' Limited	83,955
3-6 July 2015	Funds transferred to 'H' Limited 'N' account	(203,950)
28 July 2015	Funds received from 'B' Limited	120,000
28 July 2015	Funds transferred from 'H' Limited	393,663
29 July 2015	Funds paid to HMRC for VAT on the property sale generating the £705k payment to 'F' Limited above	(393,663)

28 August 2015	Funds received from ‘B’ Limited	1,000
September 2015 – February 2016	‘A’ Limited fees	(8,400)
September 2015 – March 2017	Companies House fees	(91)
September 2015 – December 0217	Interest	14
15 January 2016	Funds transferred from ‘F’ Limited	7,680
22 March 2016	Transfer from ‘O’ (a related company)	2,000
23 March 2016	Fees re company restoration	(2,063)
16 June 2017	Funds received from Mrs ‘L’ client account to close	97
27 June 2017	Funds paid to Mrs ‘L’	(97)
November 2017 – February 2018	Closing balance	(155)

Mrs ‘L’

Dates	**Description**	**Amount £**
1 July 2015	Funds received from ‘B’ Limited	406,343
13 July 2015	Funds transferred to ‘H’ Limited bank account	(406,300)
September 2015 – June 2017	Interest	54
June 2017	Closing balance	(97)

Operation of client money accounts pre 1 January 2017

‘F’ Limited received funds of £705,754 from ‘H’ Limited on 29 June 2015, 11 days after the opening of the client accounts. The Respondent states that the three brothers jointly owned a property which was sold in June 2015. Part of the profit from the sale of this property was used by the brothers to repay the debt between their partnership, ‘H’ Limited, and ‘F’ Limited. The financial

statements of ‘F’ Limited as at 30 September 2014 show the balance owed by ‘H’ Limited to ‘F’ Limited is £705,704.

On 1 July 2015, £702,000 was transferred from the ‘F’ Limited client account to the ‘B’ Limited client account at a time when ‘F’ Limited owed ‘J’, a secured creditor, circa £548,000. This was approved in a meeting minute dated 23 June 2016 nearly one year after the transfer of the money, although the Respondent was given authority to transfer this money by Mr ‘D’ on 30 June 2015. Since the transactions were through the client money accounts operated by the Respondent, ‘J’ would not have been aware of these transactions.

The same day the following transfers were made out of the ‘B’ Limited client accounts:

- £406,343 paid to Mrs ‘L’s client account;
- £83,955 to ‘H’ Limited client account; and
- £10,644 to ‘P’ for fees to restore ‘B’ Limited to the company register.

As disclosed in the financial statements of ‘B’ Limited for the year ended 30 September 2014, ‘B’ Limited owed Mrs ‘L’ £406,343 and the client account money was used to repay this debt. The authorisation from the client of this transfer shows this being described as ‘Repayment of opening deposit’.

£406,300 was transferred from Mrs ‘L’s client account to ‘H’ Limited on 13 July 2015. This transfer was authorised by Mrs ‘L’ and appears to be a loan from Mrs ‘L’ to ‘H’ Limited. As is noted on the list of client money transactions, the only other transactions on Mrs ‘L’s client account was the accumulation of interest until the balance is repaid when the account is subsequently closed on 19 June 2017.

The £83,955 paid to ‘H’ Limited on 1 July 2015 from ‘B’ Limited is described on the authorisation form as ‘Repayment of balance due’. PCD note that the audit working papers for the balance with ‘H’ Limited for the year ended 30 September 2015 state that ‘B’ Limited was owed £44,005 by ‘H’ Limited as at 1 October 2014. The £83,955 is stated as being repaying this amount and reimbursement of valid debts due to other related companies which ‘H’ Limited had taken on, on behalf of the other related companies.

The transaction list shows that £83,950 was transferred from the ‘H’ Limited client account to ‘H’ Limited on 3 July 2015. No further description was noted on the payment authorisation form.

On 5 July 2015, a further £120,000 was transferred from the ‘H’ Limited client money account to the ‘H’ Limited bank account. The audit work paper notes this as being for the reimbursement of ‘A’ Limited fees (which total £12,984) and in anticipation of other unspecified costs. These funds were withdrawn from the ‘H’ Limited client account to the partnership current account.

The payment of £120,000 on 5 July 2015 resulted in the client money account being overdrawn by £119,985. On 28 July 2015, £120,000 was transferred from the ‘B’ Limited client money account to ‘H’ Limited client money account which brought the balance into credit by £15. PCD note that the authorisation of this transfer was dated 2 July 2015, prior to the payment out of the ‘H’ Limited client money account. No separate complaint is being taken relating to the overdrawn client account on the basis that the authorisation was dated prior to the transfer causing the overdrawn account, and that the client accounts are related. The failure to process the transaction at the time of the instruction appears to be an administrative error on the part of the firm.

The source of the £120,000 from 'B' Limited remains the same repayment of the outstanding balance from 'H' Limited described in 4.17 above.

During the period from 1 July 2015 to 28 July 2015, the Respondent had therefore paid out £610,298 to related parties from the 'B' Limited client account, settling outstanding debts to related parties of £490,298 at a time when the company owed 'I' circa £167,000. Prior to the payment of £120,000 to 'H' Limited, the balance outstanding in the 'B' Limited client money account was £201,058. This was sufficient to repay the outstanding debt from 'B' Limited to 'I', even after settling the outstanding related party debts. The money used to repay these amounts originated from 'F' Limited, when 'F' Limited owed 'J', a secured creditor, circa £548,000.

In the period to 31 December 2016, being prior to the Clients Money Regulation 8A becoming effective, the only incoming funds to the 'B' Limited client account were:

Dates	Amount	Description
Quarterly	Various	Interest payments
31 May 2016	£65	Refund of Companies House fees
20 October 2016	£2,000	Donation from 'Q'

4.28 Transfers from the 'B' Limited client account in the period to 31 December 2016 were:

Dates	Amount	Description
28 August 2015	£1,000	'H' Limited
21 September 2015	£2,500	Donation to 'R' charity
27 November 2015	£15,000	'H' Limited
January 2016	£23,520	Donations to the 'B' Limited Charity, a charity in which the brothers were also trustees.
20 October 2016	£2,000	Donation from 'Q'
Various	Various	Appropriately authorised payment of 'A' Limited's fees
Various	Various	Appropriately authorised payment of Companies House fees

The payments from the 'B' Limited client account to 'H' Limited and 'B' Limited Charity, which are related parties to whom 'B' Limited no longer owed money, totalling £39,520 were made at a time when 'B' Limited still owed 'I' c£167,000.

Following the transfers referred to above of the £700k in June/July 2015, the transactions in the 'F' Limited client accounts are summarised as follows:

Incoming funds

Dates	Amount	Description
5 January 2016	£93,190	Dilapidations from 'M'
Quarterly	Various	Interest payments

Transfers out:

Dates	Amount	Description
11 November 2015	£1,989	Surveyors fees
January 2016	£32,680	'H' Limited (£7,680 to the client account and £15,000 to 'H' Limited)
February 2016	£30,000	'H' Limited (3 x £10,000)
March 2016	£25,000	'H' Limited (1x £15,000 and 1 x £10,000)
April 2016	£7,010	'H' Limited (1 x £5,000 and 1 x £2,010)
Various	Various	Appropriately authorised payment of 'A' Limited's fees
Various	Various	Appropriately authorised payment of Companies House fees

As noted in the system notes, 'H' Limited had acted as the managing agent for the properties owned by 'F' Limited, collected rent etc on behalf of 'F' Limited. As is shown on the property schedule from the 2015 audit file, 'F' Limited only owned one property in 2015, which had been vacated by the main tenant, 'M', and the tenant of the offices above had gone into administration and so the property was unoccupied. It is not clear on what basis the payment from 'F' Limited to 'H' Limited in 2016, totalling £94,690 were, at a time when 'F' Limited owed 'J' c£548,000.

The remaining transactions in the 'H' Limited's client account are the authorised payments of 'A' Limited and Companies House fees and the receipt of quarterly interest. Both sets of fees primarily related to other companies controlled by the family.

Operation of client money accounts post 1 January 2017

On 1 January 2017 a revised version of the Clients Money Regulation came into force. One change in the regulations was the introduction of Regulation 8A which specifically limits the use of client money accounts for accountancy related services only. Guidance on this regulation is also available.

PCD note that the Respondent was made aware of the changes in client money regulations during the course of a QAD visit on 26 April 2017. As the Respondent operated client money accounts, the Investigation Committee consider he should have made himself aware of the changes prior to this visit.

The transactions in the client money accounts for 'F' Limited, 'H' Limited and Mrs 'L' between 1 January 2017 and 26 April 2017 were accountancy service related and therefore not in breach of Regulation 8A.

Between 1 January 2017 and the QAD visit on 26 April 2017, the 'B' Limited client account received a donation of £2,000 (on 10 April 2017), which is not an accountancy related service. All other transactions in this period were accountancy related. Payments made from the 'B' Limited client account after the QAD visit are as follows:

Dates	Amount	Description
8 June 2017	£3,000	Donations to three charities
14 July 2017	£1,800	Payment of fees to 'T'

The receipt of the donations, the payment out of donations and the payment of the legal fees to 'T', were not accountancy related transactions and therefore not permissible under Regulation 8A.

For the three other client accounts, other than the quarterly interest receivable, the only transactions related to the closure of the accounts.

Closure of client accounts

‘B’ Limited

The final transaction, other than receipt of interest, was on 14 July 2017 regarding the payment of fees to ‘T’.

There was an attempt to close the client account on 20 November 2017, at which point, the balance in the account was £5.30. This amount was returned on 21 December 2017 and then the account was finally closed on 6 February 2018.

‘F’ Limited

The final transaction in the GDB client account was the transfer of £2,010 to ‘H’ Limited on 15 April 2016. The balance of £9.21 was transferred to the company on 16 June 2017 with the final 1p interest transferred on 3 July 2017.

Mrs ‘L’

The final transaction in the client account for Mrs ‘L’ was the transfer of £406,300 to ‘H’ Limited on 13 July 2015. The balance of £97.14 was transferred to the ‘H’ Limited’s client account on 16 June 2017 with the final 12p interest transferred on 19 June 2017.

‘H’ Limited

The final transaction in the ‘H’ Limited’s client account was the payment of Companies House fees for the Annual Return fees paid on behalf of one of the other companies controlled by the family. On 16 June 2017, the £97.14 from the closure of Mrs ‘L’s client account was paid into the ‘H’ Limited’s client account and this was the paid out to Mrs ‘L’ on 27 June 2017. The balance of £154.92 was transferred on 20 November 2017 with the final 14p interest transferred on 8 February 2018.

The Investigation Committee notes that the client accounts for ‘F’ Limited and Mrs ‘L’ were closed on 3 July and 19 June 2017 respectively, shortly after the conclusion of the QAD visit to ‘A’ Limited. The client accounts for ‘B’ Limited and ‘H’ Limited were however open for a significantly longer period of time.

Complaint 3 – Audit when not Independent

During the course of the investigation, it was noted that substantially all the transactions of ‘B’ Limited and ‘F’ Limited were going through the client money accounts of ‘A’ Limited with effect from 18 June 2015. These transactions form the basis of the accounting records of the companies for the year ended 30 September 2015. The Respondent was the RI responsible for signing the audit report on the financial statements of ‘B’ Limited for the year ended 30 September 2015 on behalf of the firm, on 27 June 2016, and was also responsible for the processing of the transactions through the client money account. This gives rise to a potential self-review threat in that the Respondent was auditing transactions which he had himself processed.

The Respondent has stated in his letter of 6 March 2018 that he did consider this potential ethical threat of auditing the accounts while also maintaining the records, however this consideration was not documented on the audit files.

APB Ethical Standard 1 states that:

> *'A self-review threat arises when the results of a non-audit service performed by the auditor or by others within the audit firm are reflected in the amounts included or disclosed in the financial statements (for example, where the audit firm has been involved in maintaining the accounting records, or undertaking valuations that are incorporated in the financial statements). In the course of the audit, the auditor may need to re-evaluate the work performed in the non-audit service. As, by virtue of providing the non-audit service, the audit firm is associated with aspects of the preparation of the financial statements, the auditor may be (or may be perceived to be) unable to take an impartial view of relevant aspects of those financial statements.'*

APB Ethical Standard 5 ('ES 5') states, in relation to the provision of accountancy services to an audit client:

> *'158 The provision of accounting services by the audit firm to the audited entity creates threats to the auditor's objectivity and independence, principally self-review and management threats, the significance of which depends on the nature and extent of the accounting services in question and upon the level of public interest in the audited entity.'*
> *'165 For entities other than listed companies or significant affiliates of listed companies, the auditor may undertake an engagement to provide accounting services, provided that:*
> *(a) such services:*
> *(i) do not involve initiating transactions or taking management decisions; and*
> *(ii) are of a technical, mechanical or an informative nature; and*
> *(b) appropriate safeguards are applied to reduce the self-review threat to an acceptable level.'*

ES 5 paragraphs 167 and 168 provides examples of acceptable accounting services which include recording transactions for which management has determined the appropriate account classification, posting coded transactions to the general ledger, posting entries approved by management to the trial balance or providing certain data-processing services (for example, payroll).

The Respondent's letter of 6 March 2018 states that while he executed the transactions, he did not initiate them and he relied on the instructions of the clients requesting the transactions and the associated supporting documentation as his audit evidence.

The Respondent processed the movement of monies through the client accounts but did not make any posting, or process any transactions in the client's accounting records.

In his letter dated 26 November 2018, the Respondent confirmed that his firm was engaged to prepare the statutory accounts. The Respondent confirmed that he considered that sufficient safeguards were in place in that the accounts preparation work and audit work were performed by different personnel, and the Respondent obtained an independent third party review of the accounts subject to audit.

It is the preparation of the statutory accounts which would involve posting and processing of transactions in an accounting context, which would then be subject to audit. The Respondent was not involved in this accounting process and, as stated above, the financial statements were subject to an independent review.

What remains of concern is that, while the Respondent was not involved in how these transactions were accounted for in the financial statements, he audited transactions that were processed by him through his firm's client accounts and were included in the audited financial statements. It is clear that this gives rise to a self-review threat.

The financial statements of 'F' Limited for the year ended 30 September 2015 and for both 'B' Limited and 'F' Limited for subsequent years were not subject to audit as they fell below the statutory threshold for audit and so no self-review threat arose in relation to those accounting periods.

Respondent's representations

The Respondent provided his representations in his letter dated 28 November 2019.

Client money regulations
The Respondent has stated that he opened the client money accounts in good faith in order to assist a charity which had temporary difficulty in opening a bank account. He does not consider that there was any benefit to himself or his firm, and no detriment to the client or any other third party.

With hindsight, the Respondent accepts that he was, perhaps, naïve to have opened the client money accounts and allowed them to have been operated in the way that they were. It was not his intention or belief that the client accounts would be used to circumvent the use of the clients own bank accounts while in dispute with their bankers.

The bank accounts took longer to close than either the client or the Respondent anticipated once he became aware of Regulation 8A. The Respondent accepts he should have made greater efforts to stay on top of the changes in the Regulations and close the accounts. The Respondent considers that any delay in closure of the accounts was done in good faith to assist the client.

The Respondent has confirmed that that he has and will continue to look to improve his practices moving forwards.

Of the fees noted in paragraph 8.4 below, the Respondent confirms that less than £250 related to the operating of the client money accounts.

Audit work
The Respondent accepts the failure to deal with the ethical threat arising in relation to his audit work.

The Respondent has referred to the audit file regarding the steps he has taken to improve his working practices but accepts that on this occasion the engagement of an external firm of accountants did not address the threat adequately.

To improve the quality of his audit work in future, the Respondent has stated he will have his audit files 'hot reviewed' by an independent firm periodically, prior to his signing the audit report for the next three years.

The Respondent states that, at all times, he acted in good faith without any gain by him or his firm and that neither the client nor the Charity Commission have lost out as a result of these matters.

Investigation Committee's submission

Clients' Money Regulation – complaints 1 and 2
The Investigation Committee submits that the Respondent was aware that the companies were in dispute with the banks and the reason that he was being asked to open the client accounts was to facilitate payments and transfers by the companies outside of their bank accounts so that the banks would not take the money to repay the outstanding debt.

The Respondent was informed by his client that 'B' Limited's bank account with 'I' had been closed in 2013, when he had obtained evidence in July 2015 that the account had remained open until at least December 2014. The Investigation Committee submits that this raises concerns about him continuing to provide banking services when he was aware the client had not been completely honest about the operation of their own bank account.

The Investigation Committee submits that, in agreeing to open the accounts, the Respondent failed to exercise professional judgement in that he knew the purpose was to, in effect, hide transactions from the companies' bankers with whom the companies had outstanding debts which had been called in.

In opening the client accounts the Respondent states that he expected that the accounts would be largely dormant as 'F' Limited had no properties producing rent and 'B' Limited only received the occasional donation. In his client take on documents, the Respondent noted that he needed to be aware of the risk of related party transactions.

The Respondent opened the client accounts on 18 June 2015. On 29 June 2015, 'H' Limited paid £705,754 into the 'F' Limited client account.

The Respondent was aware at that time that 'F' Limited did have an open current account with 'J' that this amount could have been deposited in. It was, however, deposited in the client account. The Respondent was also aware that at that time, 'F' Limited was in dispute with 'J' over an outstanding secured loan of c£548,000. Since the amount was paid into the client account, 'J' was not aware of its existence. 'F' Limited therefore held sufficient funds with which to repay the 'J' loan on which it had defaulted.

Despite being aware of the outstanding secured loan with 'J' and noting in his client take on notes that he needed to be aware of the risk of related party transactions, the Respondent paid £702,000 out of the 'F' Limited client account to the 'B' Limited client account on the client's instruction on 1 July 2015.

Similarly to the above with 'F' Limited, the Respondent was aware that there was a dispute between 'B' Limited and 'I'. The Investigation Committee submits that the security claimed by 'I' does not appear to have been registered at Companies House. On 1 July 2015, the Respondent transferred £490,298 from the 'B' Limited client account to repay related parties loans. This left a balance of over £201,000. The loan outstanding with 'I' was c£167,012.

Therefore, 'B' Limited had sufficient funds in the client money account to repay the outstanding loan which the Respondent has stated was not in dispute as it was the security over the property which was in dispute. On 28 July 2015, the Respondent transferred £120,000 from the 'B' Limited client account to 'H' Limited, on the client's instruction. As the amount outstanding with 'H' Limited

had been settled on 1 July 2015, ‘H’ Limited was not owed any money by ‘B’ Limited, however the loan on which ‘B’ Limited had defaulted remained outstanding.

The Investigation Committee therefore considers that the Respondent allowed his client accounts to be used to repay related parties, to the detriment of the bank on whose loans the ‘B’ Limited and ‘F’ Limited had defaulted. While it appears that elements of the loans were in dispute that would be for a court to conclude on, not the Respondent or his clients.

The Investigation Committee notes that the directors appear to have undertaken to pay the outstanding loans with the banks however the documentation supporting this was completed in June 2016, nearly one year after the monies were paid out of the client accounts and so were not in place at the time the Respondent allowed his client accounts to be used for these transactions.

When opening the client accounts, the Respondent noted that these would be temporary in nature. The accounts were still open nearly two years after they were opened when QAD undertook their visit in April 2017. At that time ‘B’ Limited had been restored at Companies House for over 18 months but had failed to open a bank account of its own and continued to use the client account with ‘A’ Limited as its bank account.

The Respondent was made aware in April 2017 of the change in client money regulations and in particular Regulation 8A which required client accounts only be used for the provision of accounting services. The Respondent undertook to close the client accounts.

Following the QAD visit, the Respondent paid out money as donations and to pay legal fees, neither of which are permitted use of client accounts under Regulation 8A.

The Investigation Committee concedes that there is no evidence that the Respondent benefitted personally in opening and allowing the client money accounts to be operated in the manner set out in this complaint.

The Investigation Committee submits that, in opening the client accounts and/or in allowing the related party transactions through these accounts, he Respondent’s conduct is sufficient to bring discredit in accordance with the Disciplinary Bye-laws.

Audit when not independent – complaint 3

The transactions audited by the Respondent are factual, non-judgmental and do not contain any element of estimation. The Respondent has not relied on the firm’s client money account records for audit evidence but has relied upon the source documentation authorising the transactions provided by the client. This therefore appears to address the management threat outlined in APB ES5. However, the self-review threat still remains. The initiation of the transactions came from the client, however the processing of the transactions and the maintenance of the client money accounts was performed by the Respondent. The Respondent then, as RI, reviewed and signed the audit opinion on the financial statements that included the transactions processed by the Respondent. There was no safeguard implemented to address this risk. The same individual, the Respondent, was responsible for both services. Whilst we acknowledge the Respondent’s comment that he used the client instructions as his audit evidence, that audit evidence was in respect of transactions which the Respondent had himself processed through the client account. The Respondent comments that an independent third party review was obtained of the accounts subject to audit but no review of the audit work itself was obtained.

The Investigation Committee notes that the financial statements were prepared by the independent member of the Respondent's firm and reviewed by a third party and therefore the accounting of the transactions was not undertaken by himself. The Investigation Committee submits that this was an appropriate safeguard to mitigate the risk posed by the management threat which arose.

The Investigation Committee consider that the safeguards of the use of a separate team and the review of the financial statements by a third party, are sufficient and appropriate to mitigate the ethical threat arising from 'A' Limited preparing the financial statements of 'B' Limited, which were then subject to audit by the Respondent. No safeguards were in place to mitigate the self-review threat arising from the Respondent auditing transactions he had processed through his firm's client account. The Respondent accepts that there is a potential threat but considers that the transactions were initiated by the client and that he did not rely on his firm's client money account as audit evidence. The Respondent considers that sufficient appropriate safeguards were in place to mitigate this risk, although this was not documented on the audit file. The Investigation Committee concedes that in the Respondent's view appropriate ethical safeguards were in place and it is not considered that the Respondent was deliberate or reckless in failing to identify and implement appropriate safeguards to mitigate the self-review threat.

In respect of complaints 1 and 3, it is contended that the Respondent's conduct fell below the level or professional competence expected of a member, rendering the Respondent liable to disciplinary action under 4.1b.

In respect of complaint 2, the Investigation Committee submits that the Respondent committed a breach of the Clients' Money Regulations 2017 rendering him liable to disciplinary action under 4.1c

The Respondent admitted the facts set out in the three complaints above by way of his Response dated 26 March 2020.

Sanction and costs

The Committee had regard to the current Guidance on Sanctions and in particular to Section 8 H-J.

The Committee considered that the circumstances of these complaints had the potential for serious harm, as allowing a client money account to be used for private banking purposes by clients presents a serious risk, including, as in this case, allowing clients effectively to defraud their banks. The use of client money accounts is strictly controlled by the rules and these were effectively overridden by the Respondent. The Committee gave serious consideration to whether the actions of the Respondent in allowing the firm's client accounts to be opened and used in the way they were by the four clients was a result of deliberate dishonesty, in effect, conniving with the clients to defraud the banks, or ignorance. The Committee concluded that it was more probable than otherwise that it was the result of ignorance. The Respondent and his firm were taken advantage of by four clients who ran charitable and other enterprises but who owed substantial sums to their banks, and due to their poor record, as the Respondent well knew, had been denied banking facilities They turned to the Respondent to help them transact business they were otherwise unable to do and paid the Respondent's firm just under £20,000 in fees.

Consideration of sanction for the misuse of client money accounts would normally carry a starting point of exclusion; in this case, the Committee was prepared to exercise a degree of leniency,

given the Respondent's long unblemished career in the profession, his lack of personal gain and his attempts to satisfy himself of the source of the funds paid into the accounts.

The Committee concluded that a severe reprimand was the appropriate sanction in relation to Complaints (1) and (2). The Committee also imposed a Condition on the Respondent's membership, namely that the Respondent undertake within a year of this decision a suitable course in ICAEW's Client Money rules and satisfy the PSD that he has satisfactorily completed it.

In relation to Complaint (3) which the Investigations Committee conceded was at the least serious end of misconduct involving APB Ethical Standard 5 (lack of independence in audit) the Committee did not impose a separate sanction.

The Investigation Committee applied for costs in the sum of £7261, which the Committee approved as appropriate and proportionate. Accordingly it made an order that the Respondent pay a contribution towards the Investigation Committee's costs in that sum.

Decision on publicity

Publicity to be effected in the usual manner.

Chair	Ms Ros Wright QC	
Accountant Member	Mr Martin Ward FCA	
Non Accountant Member	Ms Eileen Neilson MBA	**038397**

4. **Mr Francis Reed ACA** of
Merseyside, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 29 September 2020

Type of Member Member

Terms of complaints

1. On 21 February 2019, Mr Francis Reed ACA was convicted at a Magistrates' Court of contravening section 12(1) of the Cosmetic Products Enforcement Regulations 2013 and section 13(1) of the provision of EU Cosmetics Regulation 1223/2009, by breaching EU Cosmetics Regulation Articles 10, 14 and 19.

   Mr Francis Reed is therefore liable to disciplinary action under Disciplinary Bye-Law 4.1e and 4.2g.

2. On 21 February 2019, Mr Francis Reed ACA was convicted at a Magistrates' Court of contravening section 12(1) of the Cosmetic Products Enforcement Regulations 2013 and section 13(1) of the provision of EU Cosmetics Regulation, by breaching EU Cosmetics Regulation Article 11, in that 'A', when they as the responsible person had not made or kept a product information file for it.

   Mr Francis Reed is therefore liable to disciplinary action under Disciplinary Bye-Law 4.1a.

3. On 21 February 2019, Mr Francis Reed ACA was convicted at a Magistrates' Court of contravening section 92(2)(a) and (6) of the Trade Marks Act 1994.

   Mr Francis Reed is therefore liable to disciplinary action under Disciplinary Bye-Law 4.1e and 4.2g.

4. On 21 February 2019, Mr Francis Reed ACA was convicted at a Magistrates' Court of contravening section 92(2)(b) and (6) of the Trade Marks Act 1994.

   Mr Francis Reed is therefore liable to disciplinary action under Disciplinary Bye-Law 4.1e and 4.2g

5. On 21 February 2019, Mr Francis Reed ACA was convicted at a Magistrates' Court of contravening regulation 28 of The Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015, in that there was a failure to disclose a registered name on the website, and on business correspondence.

   Mr Francis Reed is therefore liable to disciplinary action under Disciplinary Bye-Law 4.1a.

Hearing date 29 September 2020

Pre-hearing review or final hearing Sanctions Hearing

Complaints found proved Yes, upon admission

All heads of complaint proven Yes

Sentencing order	A severe reprimand, and an order to pay the costs of the Investigation Committee in the sum of £4,965, the same to be paid on or before 30th November 2020
Parties present	Mr Reed appeared in person
Represented	Ms Sonia Stean appeared on behalf of the Investigation Committee
Hearing in public or private	The hearing was held remotely
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with materials provided by Mr Reed in support of his mitigation

The Investigation Committee's (IC's) case

1. The Respondent initially self-reported this matter to ICAEW on 19 August 2018. He explained that he had been made aware by Trading Standards that they were investigating him in relation to two businesses, including 'B' Ltd (now 'C' Ltd), that he was a director and owner of, in relation to products that were sold by those businesses. Specifically, Trading Standards were investigating whether the products and the actions taken, or not taken, in sourcing and supplying the products, may have breached regulations in relation to cosmetic products. The Respondent had no previous experience of the cosmetics industry but identified a potential business opportunity when his wife purchased some teeth whitening strips online from a UK registered business. Trading Standards were also investigating the website and confirmation emails used by one of the businesses, 'B' Ltd, and whether they may have failed to comply with regulations.

2. The Respondent appeared at a Magistrates Court on 21 February 2019 and pleaded guilty to a number of offences in relation to 'B' Ltd, and was committed for sentence to a Crown Court. On 21 March 2019 he was sentenced to a 12 month sentence of imprisonment suspended for 2 years and 150 hours of unpaid work.

3. The circumstances of the case were that the Respondent set up and ran his own online business selling teeth whitener from 2015. He imported and sold teeth whitening strips, which were manufactured by a reputable company, namely 'D', but which were not permitted to be sold in the UK. As the products were not subject to the regulations in the UK, no safety assessment had been made and they were not correctly labelled. The products were legal in the United States, and the Respondent said that he knew that but did not check as to whether the product was legal in the UK, or whether it was subject to any regulations.

4. The Respondent did breach the regulations in the UK, including by taking the products out of their packaging, which meant purchasers were not given full information. Approximately 18,000 sales were made, creating a turnover in excess of £600,000.

5. The Respondent pleaded guilty to a total of sixteen charges: three offences of selling teeth whitening strips containing a restricted substance, seven charges of selling the strips that had not undergone a safety assessment, one of selling the strips without having a product information file for it, one of selling strips that were not properly labelled, one of using a trademark and one of using a web banner with a trademark on it and failing to disclose the registered name of a company on correspondence.

6. After the situation was pointed out to the Respondent by Trading Standards, he sent emails to his customers advising them that the product should not have been sold in the UK, and

offering customers a full refund if they returned any remaining product. Following the contact from Trading Standards, he also took down his website immediately, spent time with a Trading Standards Consultant (a former Senior Trading Standards Officer) in order to educate himself, issued recall notices and disposed of the remaining stock.

7. At the sentencing hearing, the Respondent received full credit for his guilty pleas. He was sentenced on the basis that there was no fraudulent behaviour, no harm had been caused, and that there was no evidence of risk of harm, as the products are legally available in the US and made by a reputable manufacturer. The judge was satisfied that the Respondent did not present a risk to the public, that he had no history of poor compliance with court orders, that there was a realistic prospect of rehabilitation and that he had strong personal mitigation, particularly as he cooperated fully during the investigation and took prompt action upon becoming aware of the breaches. The judge was also satisfied that a sentence of immediate custody would result in significant harmful impact on others, namely the Respondent's wife and children. He was therefore sentenced to 12 months imprisonment, suspended for 24 months, and 150 hours of unpaid work.

8. A POCA hearing was held at a Crown Court on 13 June 2019. An agreed sum of £97,930 was ordered to be paid, representing the recovery of the proceeds of crime. This settlement figure was the pre-corporation tax profit from the sale of the products. In addition an order for payment of the prosecution's costs was made in the sum of £14,834.18 to be paid at the rate of £350 per month.

The Respondent's submissions

9. The Respondent made full admissions in terms of all of the complaints. He self-reported and co-operated fully with ICAEW. The Respondent states that he understands his obligation to uphold the highest standard of honesty and integrity, and wants to make clear that his business activities were carried out without any knowledge that they were in breach of the law. However, he acknowledges and accepts that, in committing these offences; he was negligent and short-sighted and failed to uphold the standards required by him as a Chartered Accountant.

10. The Respondent explains that he had audited many owner managed businesses during his auditing career and was inspired by reading books about successful entrepreneurs. He states that he naively assumed that his retail business was straightforward, and he failed to seek professional advice, which in hindsight would have prevented the situation. He is currently working as a Financial Controller, and his employer is aware of his convictions and indeed has provided a strong supporting reference. Two other supporting references from senior members of the profession have also been provided. The Respondent wishes to continue working as a Chartered Accountant and hopes to become a Finance Director in the future. Despite the anxiety and stress caused by the situation, he has learned to be much more cautious and risk focused. If he is able to remain a member, he will live and breathe the values of ICAEW at all times.

11. The Respondent expressed in clear terms regret, shame and embarrassment at the position in which he has found himself, expressed in his letter to ICAEW of 14 June 2019, and repeated to the Tribunal. Finally, the Respondent wished to thank ICAEW for communicating with him in a prompt, professional and courteous manner during the course of the investigation.

Conclusions and reasons for decision

12. The Tribunal found all of the complaints proved to the requisite standard upon admission.

Matters relevant to sentencing

13. The Respondent had no previous findings of misconduct. The Tribunal considered the *Guidance on Sanctions.* We remind ourselves that the key principles are protection of the public, maintaining the reputation of the profession, upholding proper standards of conduct within the profession, and the correction and deterrence of misconduct. We consider the complaint fell under the heading Criminal Convictions, where the member has received a custodial sentence whether or not suspended. The starting point was accordingly exclusion.

14. The aggravating feature was that the Respondent failed to take sufficient care when setting up and operating his business. The common mitigating features were that there were no adverse financial or other consequences for customers or third parties; full co-operation with ICAEW during the investigation; self-reported conduct; and the rectification of the situation so far as was possible. The Tribunal took into account the full admissions made; the sentencing remarks of the judge summarised at Paragraph 7; the significant support by way of character references from senior practitioners and his employer; and the material placed before it by the Respondent.

Sentencing Order

15. Having considered all of these factors, we concluded that a fair and proportionate sentencing order was a severe reprimand. We also order that the costs of £4,965 (which we scrutinised and found to be fair and reasonable) be paid by the Respondent, the same to be paid on or before 30th November 2020.

Decision on publicity

16. Publicity with name.

Chair	Mr Richard Jones QC	
Accountant Member	Mr Martin Ward FCA	
Non Accountant Member	Miss Jane Rees	**045551**

5. **Mr Philip Sean McCarthy [ACA]** of
ISLE OF MAN

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 30th September 2020

Type of Member	Member

Complaints

1. On 11 April 2017, Mr Philip McCarthy ACA was convicted on his own admission of four counts of Theft, contrary to sections 1 and 7 of the Theft Act 1981.

2. On 4 August 2017, Mr Philip McCarthy ACA was convicted on his own admission of eight counts of obtaining a money transfer by deception, contrary to section 15A of the Theft Act 1981.

Mr Phillip Sean McCarthy is therefore liable to disciplinary action under Disciplinary Bye-law 4.1e and 4.2g. Disciplinary Bye-law 4.1e (effective from 3 October 2016) states:

> '4.1 A member, provisional member, foundation qualification holder or foundation qualification student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder or foundation qualification student at the time of the occurrence giving rise to that liability
>
> e. if any of the circumstances set out in paragraph 2 exist with respect to him.
>
> 4.2 Those circumstances are:
> . . .
> g. that he has, in a court of competent jurisdiction, been convicted of an indictable offence (or has, before such a court, outside England and Wales been convicted of an offence corresponding to one which is indictable in England and Wales).'

Hearing date	30 September 2020
Previous hearing dates	Case Management Hearings on 8 April 2020 and 12 August 2020
Case Management, Sanctions or Final Hearing	Final hearing
Heads of complaint found proved	Complaint 1 and Complaint 2
Heads of complaint found not proved	None
Sentencing order	Excluded from membership Costs £6,970

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Ms Jessica Sutherland-Mack The Respondent was not present and was not represented
Hearing in public or private	The hearing was in public
Decision on service	The Tribunal was satisfied that service was in accordance with regulations 3 and 26 of the Disciplinary Committee Regulations
Documents considered by the Tribunal	The Tribunal considered the documents contained in the Investigation Committee's bundle

Preliminary matters

1. At the Case Management Hearing ('CMH') on 8 April 2020 the Chair was satisfied that service of the Investigation Committee's papers had been effected in accordance with Regulation 3 of the Disciplinary Committee Regulations ('DCR'). At a further CMH on 12 August 2020 the matter had been listed for a final hearing on 30 September 2020.

2. Notice of the final hearing was sent by post to Mr McCarthy ('the Respondent') on 12 August 2020. The notice was sent to his registered address. The Tribunal was satisfied that service had been effected in accordance with Regulation 26 of the DCR.

3. The Respondent had not filed a Respondent's Statement. He had not attended the Case Management Hearings and had not responded to the notice of this hearing. He had not requested an adjournment.

4. The Tribunal was satisfied that no useful purpose would be served in adjourning the hearing. Given the serious nature of the complaints, there was a clear public interest in disposing of this matter expeditiously. The Tribunal determined to proceed in the absence of the Respondent.

The Investigation Committee's case

5. The Respondent was admitted as Member of ICAEW on 1 October 2009.

6. The complaints arose out of his conviction by the Isle of Man (IoM) Court of General Gaol Delivery on four counts of theft and eight counts of obtaining property by deception.

7. The offences were committed whilst the Respondent was employed by Company A Ltd, an IoM company, as its finance director. He was responsible for overseeing the finances of the company and the other companies in its group. The Respondent was employed by Company A from August 2009 until his resignation on 25 May 2016.

8. The Respondent was also a director of Company B Ltd, a company licenced by the IoM Financial Services Authority.

9. The Respondent's activities were discovered in May 2016 when a member of Company A's staff found a credit card which ought to have been destroyed by the Respondent but had in fact been retained and used by him.

10. Following discovery of the credit card an investigation was carried out and several thefts were found to have been committed by the Respondent. The activities found to have been carried out were unauthorised credit card spending, cheque forgery, false invoicing and bank transfers. The Respondent made full admission to his employer and also when subsequently interviewed by police.

11. Count 1 related to the theft of £267,865.63 from Company A. Between December 2010 and October 2015 the Respondent issued 37 cheques for non-existent liabilities. He covered the issuing of the cheque by photocopying a genuine liability of the company and changing the details. He then signed a cheque and either forged the counter-signatory or obtained the second signature by representing the cheque was for a genuine debt. He photocopied the cheque before the payee details were inserted and wrote false details on the photocopy to make it look like the check had been drawn to cover a company expense. However, he paid the cheques to himself or, in some cases, to those he owed money to.

12. Count 2 related to electronic transfers from Company A totalling £31,185. The Respondent again created a fictitious liability by modifying a genuine expense invoice. The transfers were made to his credit card, on which he had [PRIVATE].

13. Count 3 dealt with the theft of £112,249.27 from Company B. He used the same process of making false invoices and writing cheques to cover them.

14. Count 4 related to theft by electronic transfer from Company B of £7,800.

15. The next set of charges cover eight instances of obtaining money by deception. The Respondent caused money to be transferred from one of the companies in the group totalling £106,132.71. Just under £9,000 was transferred into the Respondent's own bank account and the rest was used to pay contractors working on his house.

16. The total obtained by the Respondent, as admitted by him and accepted by the Prosecution, was £525,232.43.

17. The Respondent pleaded guilty to all the offences. He was sentenced on 7 August 2018 to 3 years 4 months' imprisonment.

18. In his sentencing remarks, the judge said the Respondent had clearly taken advantage of his role in the company. His actions were a serious breach of a position of trust. The judge said that the period of time over which the offending had occurred, the deliberate pre-planning, the diverse methods used to carry out the misappropriations, and the fact that the Respondent was very good at covering his tracks, were all aggravating factors.

19. The judge referred to a [PRIVATE].

20. Having served a lengthy period on remand, the Respondent was released from prison in November 2018.

21. The IC submitted that, as the Respondent has been convicted on indictment of two serious criminal offences he was liable to disciplinary action under Disciplinary Bye-law ('DBL') 4.2g. This bye-law applies when a member that has, in a court of competent jurisdiction outside England and Wales, been convicted of an offence corresponding to one which is indictable in England and Wales.

The Respondent's case

22. The Respondent provided ICAEW with written statements dated 12 June 2019 and 11 November 2019.

23. The Respondent accepted he had been convicted of the offences in question by the IoM court and that he was 'prima facie' liable to disciplinary action under DBL 4.2g.

24. The Respondent said that his circumstances were exceptional, stating that the root cause of his offending was [PRIVATE]. The Respondent stated that his actions did not extend to any clients of his former employers and he said that he made a significant contribution to his former employer's success and growth. For the majority of his life, he said, he had been a valued and productive member of IoM society. He had been co-operative throughout the process. He stated that he was a model prisoner in custody and has returned to society as a model member of the community. He wishes to pay back the money he took.

Conclusions and reasons for decision

Decision on complaint

25. Under DBL 4.2g (in force 2016 to 2017) a member is liable to disciplinary action if he has, in a court of competent jurisdiction, been convicted of an offence corresponding to one which is indictable in England and Wales. The Respondent was convicted of offences of theft and obtaining property by deception, which correspond to like offences under the Theft Act and the Fraud Act in this jurisdiction.

26. Further the Respondent has admitted the convictions and his liability to disciplinary action under DBL 4.2g.

27. The Tribunal therefore found the complaints proved on the basis of the evidence before it and the Respondent's own admissions.

Matters relevant to sentencing

28. There were no previous disciplinary matters recorded against the Respondent.

29. Ms Sutherland-Mack submitted the following were relevant matters of mitigation. He had made admissions to the offences and had been co-operative with the investigation.

30. Ms Sutherland-Mack submitted that aggravating factors included the length of time that the offending went on for and the fact that the Respondent had abused a position of trust.

31. The Tribunal had regard to ICAEW's *Guidance on Sanctions*. The starting point for sanction where a member has been convicted of an offence involving dishonesty or breach of trust, or where a member receives a custodial sentence, is exclusion. The Tribunal saw no reason to depart from this starting point. Given the scale of the offences of dishonesty, which attracted a lengthy custodial sentence, no other sanction could possibly be appropriate.

32. The Tribunal did not consider it necessary to impose a fine in addition to the order for exclusion.

33. The IC applied for costs in the sum of £7,330. Ms Sutherland-Mack accepted that some reduction may be appropriate to reflect the actual rather than estimated time of the hearing. In view of that, the Tribunal reduced the costs it awarded to £6,970. The Tribunal did not consider it appropriate to make any further reduction.

Sentencing order

34. The Tribunal ordered that the Respondent be excluded from membership of ICAEW on both complaints.

35. The Tribunal ordered the Respondent to pay costs of £6,970.

36. The Tribunal permitted payment by instalment, the first instalment of £580.83 to be paid on or before 10 December 2020 and thereafter eleven monthly instalments of £580.83 on or by the 10th of each subsequent month.

Decision on publicity.

37. The Tribunal directed that a record of this decision shall be published and the Respondent shall be named in that record.

Chairman	Mr Ron Whitfield	
Accountant Member	Mr Michael Barton FCA	
Non Accountant Member	Mr Graham Humby	
Legal Assessor	Mr Andrew Granville Stafford	**034889**

INVESTIGATION COMMITTEE CONSENT ORDERS

6. **KPMG LLP** of
London, United Kingdom

Consent order made on 30 October 2020

With the agreement of KPMG LLP of London, United Kingdom the Investigation Committee made an order that the firm be reprimanded, fined £5,600 and pay costs of £3,985 with respect a complaint that:

> On 2 July 2018, KPMG LLP issued an unqualified audit opinion on the financial statements of "A" plc (formally "B" plc) for the year ending 31 March 2018 which stated that the financial statements had been prepared in accordance with International Financial Reporting Standards as adopted by the European Union when the requirements of International Financial Reporting Standard 10 'Consolidated Financial Statements' had not been complied with as:
>
> a) certain intercompany sales and cost of sales were not eliminated on consolidation.
>
> And/ or
>
> b) certain intercompany debtors and creditors were not eliminated on consolidation.

051074

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7. **Azets Audit Services Limited (formerly known as Group Audit Services Ltd)** of
Cardiff, United Kingdom

Consent order made on 2 November 2020

With the agreement of Azets Audit Services Limited (formerly known as Group Audit Services Ltd) of Cardiff, United Kingdom the Investigation Committee made an order that the firm be severely reprimanded, fined £7,000 and pay costs of £2,750 with respect complaints that:

1. Between 10 May 2017 and 24 November 2017 Group Audit Services Ltd (formerly Baldwins Audit Services Ltd), accepted/and or continued appointment and issued audit reports for the entities listed in Appendix 1, in breach of paragraph 54 of Ethical Standard 2 as the firm was not permitted to accept appointment as auditor, as "A" Ltd, a network firm, was appointed as an officer of the company (company secretary to those clients).

2. Between 30 January 2018 and 24 November 2018 Group Audit Services Ltd accepted/and or continued appointment and signed audit reports for the entities listed in Appendix 2, in breach of paragraph 2.61 of the Revised Ethical Standard 2016 as the firm was not permitted to accept appointment as auditor, as "A" Ltd, a network firm, was appointed as an officer of the company (company secretary) to those clients.

047330

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8. **Mr John Roddison FCA** of
Sheffield, United Kingdom

Consent order made on 2 November 2020

With the agreement of Mr John Roddison of Sheffield, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £5,000 and pay costs of £2,169 with respect to complaints that:

1a. Between on or around 1 July 2014 and on or around February 2018 Mr John Roddison FCA was reckless in that he failed to inform his firm / Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of "A" Limited, causing his firm to be in breach of APB Ethical Standard 1 and/or the FRC Revised Ethical Standard.

And / or

1b. Between on or around 1 July 2014 and on or around February 2018, Mr John Roddison FCA failed to inform his firm / Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of "A" Limited, causing his firm to be in breach of APB Ethical Standard 1 and/or the FRC Revised Ethical Standard.

048231

9. **Mr Anthony John Sargeant** of
Sheffield, United Kingdom

Consent order made on 12 November 2020

With the agreement of Mr Anthony John Sargeant of Sheffield, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £21,000; and pay costs of £5,115 with respect to complaints that:

1. Between 29 January 2013 and 5 October 2016 Mr Anthony John Sargeant, in his capacity as Liquidator of at least nine insolvent estates, breached the fundamental principle of Professional Competence and Due Care, by failing to implement and monitor adequate controls over the processing of employee claims in the insolvent estates.

   If proven Mr Sargeant may be liable to disciplinary action pursuant to Disciplinary Bye-Law 4.1b.

   and/or

2. Between 21 November 2013 and 8 October 2015 Mr Anthony John Sargeant, in his capacity as Liquidator of five insolvent estates, breached the fundamental principle of Objectivity and paragraphs 400.7 and/or 400.17 of the Code of Ethics, by failing to take reasonable steps to identify and evaluate threats to his objectivity as a result of the relationship between “A” Ltd and “B” Limited.

   If proven Mr Sargeant may be liable to disciplinary action pursuant to Disciplinary Bye-Law 4.1b.

   and/or

3. Between 29 January 2013 and 5 October 2016 Mr Anthony John Sargeant, in his capacity as Liquidator of at least 19 insolvent estates, breached paragraph 3.9 of the Insolvency Licensing Regulations as he failed to comply with paragraph 5 of Statement of Insolvency Practice 2.

   If proven Mr Sargeant may be liable to disciplinary action pursuant to Disciplinary Bye-Law 4.1c.

042430

AUDIT REGISTRATION COMMITTEE

ORDER – 9 SEPTEMBER 2020

10. **Publicity Statement**

Garside & Co Limited, London, United Kingdom, has agreed to pay a regulatory penalty of £1,267, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.03a and 2.11 and Licensed Practice Handbook paragraphs 2.04b and 2.08d, for its failure to ensure that it was eligible to hold registration between January 2020 and April 2020, in that one of its principals did not hold the required affiliate status, and for its failure to notify ICAEW of changes within 10 business days.

056154

ORDER – 7 OCTOBER 2020

11. **Publicity Statement**

Vincent Clemas CAAS Limited, Ringwood, United Kingdom, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.03b and 2.07 for its failure to ensure that the voting rights were held by individuals holding an appropriate qualification or a registered auditor.

055039

ORDER – 7 OCTOBER 2020

12. **Publicity Statement**

Complete Audit and Accounting Solutions Ltd, London, United Kingdom, has agreed to pay a regulatory penalty of £3,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.03b and 2.07 for its failure to ensure that the voting rights were held by individuals holding an appropriate qualification or a registered auditor.

055565

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13. **Publicity Statement**

Mr Andrew Dix MIPA MABRP of Chelmsford, United Kingdom to pay a regulatory penalty of £5,000 for failure to comply with the fundamental principle of professional competence and due care.

052960

INVESTMENT BUSINESS COMMITTEE

ORDER – 25 JUNE 2020

14. **Publicity Statement**

Gilpin & Harding Limited, Birtley, United Kingdom, has agreed to pay a regulatory charge of £5,156, which was decided by the Investment Business Committee. This was in view of the firm's admitted breach of Designated Professional Body (Investment Business) Handbook 2018 regulations 2.07d (ii) and (iii) for failing to notify ICAEW of the appointments of two non-member principals on 5 May 2016, regulation 2.03b for failing to ensure that two non-member principals held DPB affiliate status, and failing to comply with paragraph 12 of the Regulations governing the use of the description Chartered Accountants and ICAEW general affiliates.

055032

ORDER – 25 JUNE 2020

15. **Publicity Statement**

Benson Wood Limited, Billingham, United Kingdom, has agreed to pay a regulatory charge of £700, which was decided by the Investment Business Committee. This was in view of the firm's admitted breach of Designated Professional Body (Investment Business) Handbook 2018 regulation 3.09 for providing exempt regulated services to clients of a connected firm, which were not incidental and complementary to other services.

055031

ORDER – 15 OCTOBER 2020

16. **Publicity Statement**

Lever Bros & Co, Isleworth, United Kingdom, has agreed to pay a regulatory charge of £449, which was decided by the Investment Business Committee. This was in view of the firm's admitted breach of Designated Professional Body (Investment Business) Handbook 2018 regulation 2.03b for failing to obtain DPB affiliate status for a principal between 11 May 2017 and 5 August 2020, rendering the firm ineligible to hold a DPB licence.

056421

PROBATE COMMITTEE

ORDER – 28 OCTOBER 2020

17. **Publicity statement**

Rotherham Taylor Limited of Preston, United Kingdom has agreed to pay a probate penalty of £1,400. This was in view of the firm's admitted breach of Probate Regulation 2.7L in that it did not inform ICAEW as soon as practicable or within 10 *business days* when a non-*authorised person* acquired a shareholding interest in the *firm* which, either before or after the change, qualified as a *material interest*.

All enquiries to the Professional Conduct Department, **T** +44 (0)1908 546 293